

1034
KANSAS STATE UNIVERSITY LIBRARIES

90Y4
Ar 5/3
P 29/11

Y4
Ar 5/3
P 29/11
HOSTILE FIRE PAY FOR CREW MEMBERS OF U.S.S.
"PUEBLO" AND CLARIFYING STATUS OF CERTAIN
NAVY STAFF CORPS OFFICERS

GOVERNMENT

Storage

HEARING
BEFORE THE
COMMITTEE ON ARMED SERVICES
UNITED STATES SENATE
NINETIETH CONGRESS

SECOND SESSION

ON

H.R. 17780

DIRECTING THE SECRETARY OF DEFENSE TO PAY THE
SPECIAL PAY AUTHORIZED UNDER SECTION 310 OF TITLE
37, UNITED STATES CODE, TO CERTAIN MEMBERS OF THE
UNIFORMED SERVICES HELD CAPTIVE IN NORTH KOREA

AND

H.R. 18146

CORRECTING AN INEQUITY AFFECTING OFFICERS OF THE
SUPPLY CORPS AND CIVIL ENGINEER CORPS OF THE NAVY

SEPTEMBER 5, 1968

Printed for the use of the Committee on Armed Services



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1968

99-782

KSU LIBRARIES



AJJ900 477667

AY
8/27A
11/25/11

COMMITTEE ON ARMED SERVICES

RICHARD B. RUSSELL, Georgia, *Chairman*

JOHN STENNIS, Mississippi	MARGARET CHASE SMITH, Maine
STUART SYMINGTON, Missouri	STROM THURMOND, South Carolina
HENRY M. JACKSON, Washington	JACK MILLER, Iowa
SAM J. ERVIN, Jr., North Carolina	JOHN G. TOWER, Texas
HOWARD W. CANNON, Nevada	JAMES B. PEARSON, Kansas
ROBERT C. BYRD, West Virginia	PETER H. DOMINICK, Colorado
STEPHEN M. YOUNG, Ohio	
DANIEL K. INOUYE, Hawaii	
THOMAS J. McINTYRE, New Hampshire	
DANIEL B. BREWSTER, Maryland	
HARRY F. BYRD, Jr., Virginia	

WILLIAM H. DARDEN, *Chief of Staff*

CHARLES B. KIRBOW, *Chief Clerk*

(II)

CONTENTS

Statements of:

H.R. 17780

	Page
Brig. Gen. Leo E. Benade, U.S. Army, Deputy Assistant Secretary of Defense (Military Personnel Policy)-----	2

H.R. 18146

Capt. John A. Scott, Supply Corps, U.S. Navy, Director of Supply Corps Overseas Personnel, Naval Supply Systems Command and Bureau of Naval Personnel-----	5
--	---

(III)

CONTENTS

PREFACE

The following is a list of the contents of the book. The first part of the book is devoted to a general introduction to the subject. The second part contains a detailed account of the various methods of investigation which have been employed in the study of the subject. The third part is devoted to a discussion of the results of the various investigations and to a comparison of the results with the results of other investigators. The fourth part contains a summary of the results of the various investigations and a discussion of the conclusions which have been reached.

HOSTILE FIRE PAY FOR CREW MEMBERS OF U.S.S. "PUEBLO" AND CLARIFYING STATUS OF CERTAIN NAVY STAFF CORPS OFFICERS

THURSDAY, SEPTEMBER 5, 1968

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, D.C.

The committee met, pursuant to notice, at 10:35 a.m., in room 212, Old Senate Office Building, Senator Richard B. Russell (chairman) presiding.

Present: Senators Russell, Stennis, Symington, Jackson, Young of Ohio, McIntyre, Byrd, Jr., of Virginia, Thurmond, and Pearson.

Also present: William H. Darden, chief of staff; T. E. Braswell, Jr., professional staff member; Charles B. Kirbow, chief clerk; and Herbert S. Atkinson, assistant chief clerk.

H.R. 17780

Chairman RUSSELL. The first bill for consideration in this open session of this committee this morning is H.R. 17780, which would authorize hostile-fire pay for the crewmembers of the *Pueblo*.

(H.R. 17780 follows:)

[H.R. 17780, 90th Cong., second sess.]

AN ACT To direct the Secretary of Defense to pay the special pay authorized under section 310 of title 37, United States Code, to certain members of the uniformed services held captive in North Korea

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in the administration of section 310 (relating to special pay for duty subject to hostile fire) of title 37, United States Code, the Secretary of Defense shall pay the special pay authorized by such section to each member of a uniformed service who was aboard the United States Ship *Pueblo* at the time of her capture by military forces of North Korea. Such pay shall be paid for the period beginning January 1, 1968, and ending with the month after the month in which such member is repatriated.

Passed the House of Representatives July 23, 1968.

Attest:

W. PAT JENNINGS,
Clerk.

Chairman RUSSELL. The Chair wishes to note that our committee colleague, Senator Dominick, has introduced a bill, S. 3750, on the same subject. For practical reasons we are considering the bill that has already passed the House, but Senator Dominick's sponsorship of the companion bill should be noted.

For a person who is a prisoner to continue to receive hostile-fire pay during the period he is held by the enemy, the person must have been entitled to hostile-fire pay at the time he was captured.

The members of the crew of the *Pueblo* were not so entitled, and hence they cannot receive hostile-fire pay during their imprisonment.

The Department of Defense's witness on this bill is Brig. Gen. L. E. Benade, Deputy Assistant Secretary of Defense for Military Personnel Policy. You may proceed, General.

STATEMENT OF BRIG. GEN. LEO E. BENADE, U.S.A., DEPUTY ASSISTANT SECRETARY OF DEFENSE, (MANPOWER AND RESERVE AFFAIRS; MILITARY PERSONNEL POLICY)

General BENADE. I am Brig. Gen. Leo E. Benade, Deputy Assistant Secretary of Defense (Military Personnel Policy).

As you may know, section 310 of title 37 United States Code authorizes a special pay at the rate of \$65 per month for any month in which a member of the Armed Forces was entitled to basic pay and in which he meets one or more of the following conditions.

"(1) was subject to hostile fire or explosion of hostile mines;

"(2) was on duty in an area in which he was in imminent danger of being exposed to hostile fire or explosion of hostile mines and in which, during the period he was on duty in that area, other members of the uniformed services were subject to hostile fire or explosion of hostile mines; or

"(3) was killed, injured or wounded by hostile fire or, any other hostile action."

The Secretary of Defense is authorized to prescribe the regulations under which this special pay will be made.

The Secretary of Defense in 1965 designated all of Vietnam and the contiguous waters as a hostile fire area, extending the entitlement to all personnel stationed in-country.

More recently, on April 1, 1968, a small enclave along the western end of the DMZ in Korea was also designated as a hostile fire area for purposes of this entitlement.

When a member who is entitled to hostile fire pay becomes missing or captured, the provisions of the Missing Persons Act provide for him to continue to receive such pay until he returns to military control or a legal finding of death is made and his estate is settled. Unfortunately, members of the Armed Forces who may be missing or captured under circumstances such as the U.S.S. *Pueblo* may not be awarded this special pay. On March 5, 1965, the Comptroller General of the United States, in his ruling B-156088, rendered the opinion that the legislative history clearly established the intent not to authorize the payment of this special pay for duty subject to hostile fire to members of a uniformed service captured or missing as the result of hostile action if they had not otherwise qualified for such pay immediately prior to that time.

The purpose of the proposed legislation, H.R. 17780, is to offset the unfortunate consequences of this ruling which now serves to deny this \$65 per month special pay to those members of the crew of the U.S.S. *Pueblo* now in the hands of the North Koreans.

The Department of Defense has long held the view that any member of the uniformed services who is captured by a hostile force, or is missing under circumstances that indicate hostile action was involved, should be entitled to hostile fire pay.

Consequently, the Department of Defense supports H.R. 17780 but believes that the principle involved goes beyond the single incident of the *Pueblo*, and makes desirable legislation of more general applicability. For that reason the Department of Defense had proposed substitute legislation which would amend section 310 of title 37, United States Code, by adding a new clause, that is "(4) was in a captured or missing status under circumstances that indicate action by a hostile force was involved."

This concludes my statement, thank you very much.

Chairman RUSSELL. Do you know how much per annum of hostile fire pay is in Vietnam?

General BENADE. Yes, sir, during calendar year 1967, \$404 million was expended on hostile fire pay, and the estimates for fiscal year 1969 are \$504,559,000.

Chairman RUSSELL. That doesn't include the Korean payments.

General BENADE. Yes, sir; that includes all payments of hostile fire now being paid. It does not include any amount for the members of the U.S.S. *Pueblo* who right now are not entitled to such payment.

Chairman RUSSELL. I am interested to note that under the definition in existing law, or what you propose, it would not take care of the members of the crew of the *Liberty* that were shot up so badly by the Israelis in the recent Israeli-Egyptian war. Why is that, because the Israelis claim they made a mistake and it really wasn't hostile or accidental? For what reason do you leave them out?

General BENADE. No, sir; the crew of the *Liberty* are not entitled to payment under existing law, sir, for the same reasons, for example, that the members of the crew of the U.S.S. *Pueblo* are not entitled.

Under the language proposed by the Department of Defense originally the language is broad enough that the Secretary of Defense would have been able to make a finding to cover an incident such as the *Liberty*. The bill as passed by the House, H.R. 17780, now before this committee, is narrower than the original Defense bill and would limit this particular payment to the crew of the U.S.S. *Pueblo*.

Chairman RUSSELL. Yes, but look on the bottom of page 3 of your statement now in which you say what the Department wants. That wouldn't cover the crew of the *Liberty*. That is just where they were captured or missing.

General BENADE. I see your point, Mr. Chairman.

Chairman RUSSELL. Those men were badly wounded and a number of them killed. They were not missing or captured.

General BENADE. I see your point.

Chairman RUSSELL. So they would not have been covered by any of this.

General BENADE. That is correct.

Chairman RUSSELL. Does the Department have a position on the crew of the *Liberty*?

General BENADE. Yes, as a matter of interest, those crewmembers of the *Liberty* who were killed or wounded were awarded hostile fire pay in a determination made by the Secretary of the Navy.

Chairman RUSSELL. Of course, they wouldn't draw much pay, they were under fire only 1 day, but that was a pretty destructive day.

General BENADE. Yes, sir.

Chairman RUSSELL. Senator Thurmond?

Senator THURMOND. Mr. Chairman, I am in favor of the legislation. I don't believe I have any questions.

Chairman RUSSELL. Senator Stennis?

Senator STENNIS. I don't have any questions, Mr. Chairman. I am in favor of the bill.

Chairman RUSSELL. Senator Symington?

Senator SYMINGTON. No questions, Mr. Chairman.

Chairman RUSSELL. Senator Pearson?

Senator PEARSON. No questions.

Chairman RUSSELL. Senator Byrd?

Senator BYRD, Jr., of Virginia. No questions.

Chairman RUSSELL. Just one minute, General, before you get away. How about the crew of the *Liberty* that were wounded, they are entitled to disability benefits, aren't they?

General BENADE. Yes, sir.

Chairman RUSSELL. They are entitled?

General BENADE. Yes, sir.

Chairman RUSSELL. Thank you very much, General Benade.

General BENADE. Thank you very much, Mr. Chairman.

(Subsequently, in executive session, the committee voted to report H.R. 17780, without amendment, as covered by S. Rept. No. 1507.)

H.R. 18146

Chairman RUSSELL. The next bill is H.R. 18146, which is a legislative proposal by the Department of Defense that would correct some defects that have been discovered in the definition of the term total commissioned service for certain staff corps officers of the Navy.

(H.R. 18146 follows:)

[H.R. 18146, 90th Cong., second sess.]

AN ACT To amend title 10, United States Code, to correct an inequity affecting officers of the Supply Corps and Civil Engineer Corps of the Navy

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 6388 of title 10, United States Code, is amended as follows:

(1) Subsection (a) is redesignated as subsection "(b)" and is amended by—

(A) striking out "originally" and inserting "initially" in place thereof; and

(B) inserting "except the Supply Corps and the Civil Engineer Corps" after "any staff corps of the Navy".

(2) Subsection (b) is redesignated as subsection "(c)" and is amended by inserting "or (b)" after "subsection (a)".

(3) Subsection (c) is redesignated as subsection "(d)" and is amended by striking out "(b)" and inserting "(c)" in place thereof.

(4) Subsection (d) is redesignated as subsection "(e)".

(5) Subsection (e) is redesignated as subsection "(f)" and is amended by striking out "(d)" and inserting "(e)" in place thereof.

(6) A new subsection (a) is inserted reading as follows:

"(a) For the purpose of the preceding sections of this chapter, the total commissioned service of each officer on the active list of the Navy in the Supply Corps or the Civil Engineer Corps who was initially appointed as a Regular or as a Reserve in the grade of ensign in the line or any staff corps or in the grade of lieutenant (junior grade) in the Civil Engineer Corps and who has served continuously on active duty since that appointment shall be computed from June 30, of the fiscal year in which he accepted that appointment."

Sec. 2. Notwithstanding any other provision of law, an officer of the Navy in the Supply Corps or the Civil Engineer Corps who is not selected for promotion to a higher grade after the enactment of this Act may not be retired under chapter 573 of title 10, United States Code, earlier than he would have been retired had this Act not been enacted.

Passed the House of Representatives July 23, 1968.

Attest:

W. PAT JENNINGS,
Clerk.

Chairman RUSSELL. The departmental witness on this bill is Capt. John A. Scott who is Director of the Supply Corps Officer Personnel, Naval Supply Systems Command. You may proceed.

STATEMENT OF CAPT. JOHN A. SCOTT, SUPPLY CORPS, U.S. NAVY, DIRECTOR OF SUPPLY CORPS PERSONNEL, NAVAL SUPPLY SYSTEMS COMMAND AND BUREAU OF NAVAL PERSONNEL

Captain SCOTT. Thank you, Mr. Chairman and members of the committee, I am Capt. John A. Scott, Supply Corps, U.S. Navy, Director of Supply Corps Overseas Personnel on the Staff of the Commander, Naval Supply Systems Command, and the Chief of Naval Personnel. I am representing the Department of Defense on H.R. 18146. The purpose of the proposed bill is to correct some defects that have been discovered in the definition of the term "total commissioned service" for certain staff corps officers of the Navy.

Section 6388 of title 10, United States Code, defines total commissioned service for staff corps officers for the purpose of (1) computing severance pay of lieutenants and lieutenants (junior grade) who are discharged following two failures of selection for promotion or after being found unsatisfactory and (2) determining the date on which officers in higher grades shall be retired mandatorily.

Under 10 U.S.C. 6388, as interpreted by the Comptroller General and the U.S. Court of Appeals for the District of Columbia Circuit, a staff corps officer who had prior service in the line of the Navy may count only his staff corps service in computing his total commissioned service if his initial appointment in a staff corps was in the grade of ensign or lieutenant (junior grade).

A substantial number of officers in the Supply Corps and the Civil Engineer Corps served for several years as line officers before their appointment in their present corps as ensigns or lieutenants (junior grade), in the present corps.

Under present law, for example, if such an officer has served 5 years in the line and six in the Supply Corps and is discharged for two failures of selection for promotion to the grade of lieutenant commander, he receives severance pay equal to 12 months' basic pay, whereas if all his service had been in the line or if all of it had been in the Supply Corps, he would have received 22 months' basic pay.

On the other hand, for example, if a Supply Corps officer with 5 years of previous line service attains the grade of lieutenant commander and fails of promotion two or more times, he cannot be retired involuntarily until he has completed 25 years of active duty as an officer, whereas his contemporaries who served continuously in line or staff corps are retired mandatorily on completion of 20 years of com-

missioned service. The same disparity exists, of course, in the higher grades. A Supply Corps commander, if his promotions stopped at that grade, could serve for 35 years instead of 30, and a rear admiral could serve 40 years instead of 35.

Thus, in the case of many officers of the Supply Corps and the Civil Engineer Corps who had prior service in the line, the definition of total commissioned service in 10 U.S.C. 6388 works to the detriment of passed-over lieutenants and to the advantage of those who reach higher grades. Both results are inequitable, and the second is especially undesirable from the personnel management standpoint.

The proposed legislation would eliminate these inequities by providing that the total commissioned service of each officer of the Regular Navy in the Supply Corps or the Civil Engineer Corps who has served continuously since his original appointment as a Regular or Reserve in the grade of ensign in the line or any staff corps or in the grade of lieutenant (junior grade) in the Civil Engineer Corps shall be computed from June 30 of the fiscal year in which he accepted his initial appointment. Thus all of his active commissioned service would count for all purposes.

Since some senior officers would gain years of total commissioned service as a result of this legislation and would be subject to unexpectedly early retirement, a saving provision is included to preclude their mandatory retirement in their present grades earlier than they would have been retired under present law. They were tendered their appointments and accepted them in good faith and are undoubtedly relying, at a minimum, upon continued active service for the periods authorized by law for officers in their current grades. None have assurance of reaching a higher grade, however. Hence, application of the new definition of total commissioned service to officers who receive promotions after this legislation becomes effective will not result in undue hardship.

The enactment of the proposal would result in a minimal increase, in fact we estimate, Mr. Chairman, \$16,000 a year, in budgetary requirements of the Department of Defense.

This concludes my statement, Mr. Chairman, I appreciate this great privilege of appearing before this most distinguished committee.

Thank you.

Chairman RUSSELL. Captain Scott, how many officers do you estimate would be affected by this legislation?

Captain SCOTT. In the case of severance pay, Mr. Chairman, an average of two a year, sir.

Chairman RUSSELL. Two a year?

Captain SCOTT. Yes, sir.

Chairman RUSSELL. I thought it would be very few from the way it was set forth.

Senator STENNIS?

Senator STENNIS. I have no questions.

Chairman RUSSELL, Senator Symington?

Senator SYMINGTON. No questions.

Chairman RUSSELL. Senator Jackson?

Senator JACKSON. No questions.

Chairman RUSSELL. Senator Young?

Senator YOUNG. I have no questions.

Chairman RUSSELL. Senator Byrd?

Senator BYRD. I have no questions.

Chairman RUSSELL. Senator Pearson?

Senator PEARSON. I have no questions.

Chairman RUSSELL. The committee will now go into executive session.

(Whereupon, at 10:50 the hearing proceeded to executive session.)

(Subsequently, in executive session, the committee voted to report H.R. 18146, without amendment, as covered by S. Rept. No. 1503.)



Faint, illegible text at the top of the page, possibly bleed-through from the reverse side.

