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FULL COMMITTEE CONSIDERATION

OF

S. 274

TO AMEND CHAPTER 49 OF TITLE 10, UNITED STATES CODE, TO
PROHIBIT UNION ORGANIZATION AND MEMBERSHIP IN THE
ARMED FORCES, AND FOR OTHER RELATED PURPOSES

COMMITTEE ON ARMED SERVICES
HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

SECOND SESSION



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NINETY-FIFTH CONGRESS, SECOND SESSION

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(II)

FULL COMMITTEE CONSIDERATION OF S. 274, TO AMEND CHAPTER 49 OF TITLE 10, UNITED STATES CODE, TO PROHIBIT UNION ORGANIZATION AND MEMBERSHIP IN THE ARMED FORCES, AND FOR OTHER PURPOSES

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Washington, D.C., Tuesday, February 21, 1978.

The committee met, pursuant to notice, at 10:11 a.m. in room 2118, Rayburn House Office Building, Hon. Melvin Price (chairman) presiding.

The CHAIRMAN. The committee will be in order.

This morning we start with a report from the Investigations Subcommittee on S. 274, to prohibit union membership in the Armed Forces and for other related purposes. Following that, we will go into hearings on the Army's procurement portion of H.R. 10929.

The Chair recognizes the gentleman from New York, Mr. Stratton.

REPORT BY HON. SAMUEL S. STRATTON, A REPRESENTATIVE FROM
NEW YORK, CHAIRMAN, INVESTIGATIONS SUBCOMMITTEE

Mr. STRATTON. Thank you, Mr. Chairman.

This morning I am reporting on the fact that your Investigations Subcommittee did on the 1st of February report out unanimously S. 274, a bill to prohibit union organization of the Armed Forces, membership in military organizations by members of the Armed Forces, and recognition of military labor unions by the Government, with amendments.

[S. 274 is as follows:]

[S. 274, 95th Cong., 1st sess.]

AN ACT To amend chapter 49 of title 10, United States Code, to prohibit union organization and membership in the armed forces, and for other related purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby finds that—

(1) members of the armed forces must be prepared to fight, and, if necessary, to die, to insure the welfare, security, and liberty of the United States and its people;

(2) discipline, and prompt and unquestioning obedience to lawful orders of superior officers are essential and time-honored elements of the American military tradition, and, from the earliest articles of war, military laws and regulations have prohibited conduct which would undermine the military chain of command;

(3) the processes of conventional collective bargaining and labor negotiations cannot and should not be applied to the armed forces, and strikes, work slowdowns, and similar job actions have no place in the armed forces;

(4) unionization of the armed forces is incompatible with the military chain of command, undermines the role, authority, and position of the commander, and constitutes a clear threat to the morale and readiness of the armed forces; and

(5) there is clear and present danger that the armed forces will become unionized.

Sec. 2 (a) Chapter 49 of title 10, United States Code, is amended by adding at the end thereof a new section as follows:

§ 975. Union organizing and membership prohibited

“(a) As used in this section—

“(1) ‘Member of the armed forces’ means a member of the armed forces who is (A) serving on active duty, or (B) a member of a Reserve component.

“(2) ‘Labor organization’ means any organization which engages in or has as one of its objectives (A) negotiating or bargaining with the Government of the United States, on behalf of members of the armed forces, concerning the terms and conditions of military service; (B) representing individual members of the armed forces in connection with any grievance or complaint of any such member arising out of the terms and conditions of military service; or (C) striking, picketing, or engaging in any other concerted action directed against the Government of the United States. Such term does not include any professional, fraternal, military, or veterans organization or association if such organization or association does not engage in or have as one of its objectives any of the activities described in the first sentence of this paragraph.

“(3) ‘Civilian employee of the Department of Defense’ means any civilian officer or employee of the Department of Defense as defined in sections 2104 and 2105 of title 5, any officer of the Department of Defense holding an Executive Schedule position under subchapter II of chapter 53 of such title, and any civilian employee who is employed by an instrumentality described in section 2105(c) of such title and who is compensated from nonappropriated funds.

“(b) (1) It shall be unlawful for any member of the armed forces, knowing of the activities or objectives of a particular labor organization, to join or to maintain membership in such organization, or to solicit any other member of the armed forces to join or maintain membership in such organization.

“(2) It shall be unlawful for any labor organization to enroll in such organization any member of the armed forces, or to solicit or accept dues or fees from any member of the armed forces.

“(c) (1) It shall be unlawful for any member of the armed forces, or any civilian employee of the Department of Defense, to negotiate or bargain, or attempt to negotiate or bargain, on behalf of the United States, concerning the terms and conditions of military service of members of the armed forces with any individual, organization, or association which represents or purports to represent members of the armed forces.

“(2) It shall be unlawful (A) for any individual, organization, or association to negotiate or bargain, or attempt to negotiate or bargain, with the Government of the United States, on behalf of members of the armed forces concerning the terms and conditions of military service, (B) for any labor organization to represent, or attempt to represent, individual members of the armed forces in connection with any grievance or complaint arising out of the terms and conditions of military service, or (C) for any individual, organization, or association to organize or attempt to organize, or to participate in, a strike or any other concerted action involving members of the armed forces directed against the Government of the United States.

“(d) (1) It shall be unlawful for any individual, organization, or association to use any military installation, facility, reservation or other property of the Department of Defense for any meeting, demonstration, or other similar activity if such meeting, demonstration, or other activity concerns any of the activities prohibited by subsection (b) (1), (b) (2), or (c) (2) of this section.

“(2) It shall be unlawful for any member of the armed forces, or any civilian employee of the Department of Defense, to permit or authorize the use of any military installation, facility, reservation, or other property of the Department of Defense for any meeting, demonstration, or other similar activity if such meeting, demonstration, or other activity concerns any of the activities prohibited by subsection (b) (1), (b) (2), or (c) (2) of this section.

“(e) Nothing in this section shall limit the right of any person (1) to join or maintain membership in any organization or association not constituting a ‘labor organization’ as defined in subsection (a) (2) of this section; (2) to seek or receive information from any source; (3) to be represented by counsel in any legal or quasi-legal proceeding, as authorized by applicable laws and regulations; (4) to petition the Congress for redress of grievances; or (5) to take such administrative action to seek such administrative or judicial relief as is authorized by applicable laws and regulations.

"(f) For purposes of this section, any person employed as a civilian technician by a Reserve component and who is also a member of a Reserve component, shall be considered in both his military and civilian capacities to be a member of the armed forces.

"(g) (1) Any individual who violates the provisions of subsection (b) (1), (c) (1), (c) (2), (d) (1), or (d) (2) of this section shall be punished by a fine of not more than \$10,000 or by imprisonment for a term of not more than five years, or by both such fine and imprisonment.

"(2) Any organization or association which violates subsection (b) (2), (c) (2), or (d) (1) of this section shall be punished by a fine of not less than \$25,000 nor more than \$250,000 for each violation."

(b) The table of sections at the beginning of chapter 49 of title 10, United States Code, is amended by adding at the end thereof the following:

"975. Union organizing and membership prohibited."

SEC. 3. In order to give persons who, on the date of enactment of this Act (1) are employed as civilian technicians by Reserve components of the armed forces, (2) are also members of a Reserve component, and (3) hold membership in any organization or association which represents or attempts to represent such persons concerning terms and conditions of employment with the Government of the United States a reasonable period of time to terminate their membership in such organizations or association, the provisions of section 975(b) of title 10, United States Code, as added by section 2 of this Act, shall not become effective with respect to such persons (in their capacity as civilian technicians) until the expiration of 90 days after the date of enactment of this Act.

Passed the Senate September 16 (legislative day, September 15), 1977.

Attest:

J. S. KIMMITT,
Secretary.

Mr. STRATTON. As amended by the subcommittee, the bill would make it unlawful for a member of the Armed Forces to join or maintain membership in a "military" labor organization.

Without perhaps reading all of this definition I think I should make clear the term "military labor organization" is perhaps a new one in legislation. It is defined in the bill as any organization that engages in or has as one of its objectives or is substantially likely to engage in the series of actions indicated in the subparagraph below, namely:

(A) Negotiating or bargaining with any civilian officer or employee, or with any member of the Armed Forces on behalf of members of the Armed Forces, concerning the terms or conditions of service of such members in the Armed Forces.

(B) Representing individual members 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 any such member arising out of the terms or conditions of service of such members in the Armed Forces.

(C) Striking, picketing, marching, demonstrating, or any other similar form of concerted action which is directed against the Government of the United States and which is intended to induce any civilian officer or employee, or any member of the Armed Forces, to—

(i) Negotiate or bargain with any person concerning the terms or conditions of service of any member of the Armed Forces.

(ii) Recognize any organization as a representative of individual members of the Armed Forces in connection with complaints and grievances of such members arising out of the terms or conditions of service of such members in the Armed Forces.

(iii) Make any change with respect to the terms or conditions of service of individual members of the Armed Forces.

This is a lengthy definition, but I think the Members would want to know exactly what it was we were specifically outlining.

It would also make it unlawful for any person (1) to enroll a member of the Armed Forces in a military labor organization, or solicit or accept dues for such an organization from any such members; (2) to negotiate or bargain on behalf of members of the Armed Forces, with their military or civilian superiors, concerning the terms or conditions of military service; (3) to organize any strike, picketing, march or demonstration which is intended to induce any member of the Armed Forces or a civilian officer or employee (a) to negotiate or bargain concerning the terms or conditions of military service, (b) to recognize any military labor organization as a representative of individual members of the Armed Forces in connection with any complaint or grievance relating to the terms or conditions of military service, or (c) to make any change in the terms or conditions of military service; or (4) to use any military installation or facility for any meeting, march, picketing, et cetera, for the purpose of engaging in any activity prohibited by the act.

The bill would also make it unlawful for any military labor organization to represent a member of the Armed Forces in a grievance or complaint arising out of the terms or conditions of service of such member.

This is a somewhat detailed explanation, but we do have to be specific in dealing with a matter of this kind.

Moreover, members of the Armed Forces and their civilian superiors would be prohibited from negotiating or bargaining, on behalf of the United States, concerning the terms or conditions of employment with any person who purports to represent members of the Armed Forces.

The ban is not only against those who seek to represent and negotiate, but also those in the military force negotiating on behalf of the United States. And they would be prohibited from authorizing the use of any military installations or facilities for any meeting, march, picketing, et cetera, for the purposes and activities prohibited by the bill.

The bill contains criminal penalties for its violation—5 years and/or \$10,000 in the case of an individual, and \$25,000 to \$250,000 in the case of organizations.

The principal difference between the subcommittee bill and S. 274 as passed by the Senate on September 19, 1977 is that the subcommittee deleted the language which would have considered civilian technicians employed by National Guard or Reserve components to be members of the Armed Forces, and hence subject to the provisions of the bill, in their civilian as well as their military capacities. In other words, the Senate bill would prohibit civilian technicians from being represented by labor unions in their civilian as well as in their military capacity, as many of them are in fact presently represented.

The subcommittee's hearings included testimony from officials of five labor unions. Each of those witnesses pointed out the distinction between the duties of these technicians during their 40-hour week as civilian employees of the Guard or Reserve, and their military duties during period of inactive duty training. They noted, for example, that while S. 274 as passed by the Senate would prohibit a technician from an Air National Guard unit from joining a civilian union, a pilot in that same unit who was employed by an airline as a civilian could belong to the Airline Pilots Association.

The subcommittee also received testimony from the Honorable Erwin N. Griswold, former Solicitor General of the United States and former dean of the Harvard Law School, in which he expressed the firm opinion that S. 274 as passed by the Senate would narrow the first amendment rights of civilian technicians, and hence would be clearly unconstitutional. Dean Griswold suggested that the problem could be avoided by applying the prohibition to technicians only in their military capacity. It was this testimony of Dean Griswold which gave the subcommittee its greatest concern. We concluded that enacting a sound bill to prohibit unionization of active duty military personnel was so important that we should not endanger the adoption of such legislation by reporting out a bill that might be seriously defective on the issue of the rights of National Guard and Reserve technicians in purely civilian capacity.

In the bill that our subcommittee is reporting out, we have also revised some of the other language of S. 274 as passed by the Senate. Those revisions, we believe, should avoid any possibility that the restrictions of the legislation could be construed as infringing on first amendment rights of military personnel.

I would like to pay particular tribute to the gentleman from South Carolina, Mr. Davis, a distinguished attorney and member of the subcommittee, for making recommendations in this specific regard.

During the course of our extensive hearings, a question was raised whether S. 274 might interfere with the activities of certain religious organizations which presently provide counseling to members of the Armed Forces. In order to make it clear that no such restriction was intended, the subcommittee added the words "or counseling" to subsection (g) 3. As a result of that addition, we believe there can be no doubt that this legislation does not in fact interfere with the rights of Armed Forces personnel to obtain counseling from any source.

In offering the subcommittee bill for consideration by the committee, Mr. Chairman, I do wish to offer one technical amendment to correct an error in the definition of member of the armed forces.

On page 9, line 5, after the word "means," insert "(A)"; on page 9, line 6, insert a comma after the word "or"; and on page 9, line 7, before the word "performing" insert "(B) a member of a Reserve component while".

All of which means the definition would then read: Member of the Armed Forces means (A) a member of the Armed Forces who is serving on active duty, or (B), and that should be a capital B, a member of a Reserve component while performing inactive duty training.

Mr. Chairman, I move the approval of S. 274 as amended by the subcommittee with the amendment which I referred to above.

The CHAIRMAN. Is there discussion of the motion?

Mr. Beard.

Mr. BEARD. Yes, Mr. Chairman.

For sake of brevity I would like at this point in the record to introduce my statement and ask unanimous consent this be accepted in the record. It supports the legislation.

I would like to reemphasize the point about the technician aspect of it that I know is going to be discussed later. I know many individuals on the subcommittee felt the technician situation should be covered. But having sought out legal opinions and having seen the bill sent over also to the Post Office and Civil Service Committee and seeing the

whole thrust of the bill jeopardized because of this one segment, we felt at this time that the bill should go without the technician aspect. I reemphasize this problem to those members who feel strongly about it, because the mood is right to get a union organization-type bill for active duty personnel. I think that is our major concern at this date. With that I yield back the balance of my time.

WRITTEN STATEMENT OF HON. ROBIN L. BEARD, A REPRESENTATIVE FROM TENNESSEE

Mr. Chairman: The readiness and discipline of our uniformed Armed forces is essential to our National Security. It is my view that the unionization of our Armed Forces would undermine both of these necessary requirements. Moreover, there is no question that the unionization of our military would drive up personnel costs and seriously jeopardize other important elements of our budget including procurement and Research and Development programs.

I should point out that there is no doubt in my mind that military personnel have legitimate complaints in many areas. The erosion of benefits is a very real problem that Congress must face and I think we are facing it as a byproduct of the hearings that we have had on unionization.

I would also like to point out that I believe that we have to consider the problem of Military Unions as a direct offshoot of our all-volunteer Army. The serious discussion of military unions started when we went to the all-volunteer service. All of a sudden, the military has become just another job. The sense of National Service has taken a back seat. This to me is one of the most disturbing aspects of the all-volunteer service and I believe this is a matter that we will have to consider in the future.

With this in mind, I support the legislation as reported by the Investigations Subcommittee which disallows the unionization of military personnel. But I believe the unionization will continue to be a problem unless we address those issues which are the causes behind the desire for military unionization.

The CHAIRMAN. Mr. Montgomery.

Mr. MONTGOMERY. Mr. Chairman, at the proper time, I would like to offer an amendment.

Have you adopted the technical amendment?

The CHAIRMAN. We wouldn't be able to vote on it immediately because a quorum is not here.

Mr. MONTGOMERY. I will wait until we get a quorum. Then I will offer my amendment, if that will be all right.

Mr. FORD. Offer it now.

The CHAIRMAN. Offer it now and discuss it now, but wait until a quorum before we vote on it.

Mr. MONTGOMERY. I want to be sure I have all my "troops" here.

Mr. Chairman, then I offer the amendment and ask Mr. Wincup to distribute the amendment. As he is passing it out, I would like to make a brief statement.

S. 274 as passed by the Senate contains language that barred National Guard Reserve Force technicians from being members of the union. The Investigations Subcommittee deleted section 976 of S. 274, pertaining to Reserve and National Guard technicians, because some of the members were concerned about the constitutionality of that section. I know Chairman Stratton expressed his concern at the time that I testified before the subcommittee in support of this legislation, because he felt the bill would void existing contracts.

I am offering an amendment pertaining to National Guard technicians that would eliminate any problems of constitutionality because the provisions are already enforced by employees of the FBI, the CIA, and the TVA. No question of constitutionality has been raised about those groups.

Mr. Chairman, I have strong feelings that some constraints should be placed on the National Guard technicians union activities. Certainly, there is as much need and justification for the National Guard technicians to have these constraints on union activities as there is for employees of those agencies I have just named.

Mr. Chairman, I feel I know the technician program as well as anyone in this room, and have done as much for the technicians as anyone in this room. I cosponsored the original law that created the National Guard technician program, and offered the legislation enacted in 1976, giving these technicians 100 percent retirement credit. I am concerned that if this technician program is not brought under some control as pertains to their union activities, the effectiveness and hence the readiness of the National Guard will be jeopardized. Remember that almost 50 percent of the combat and support forces are in the National Guard and Reserve Forces.

Adjutants general of all the States strongly support some legislation to control the unions in the technician program. Commanders have indicated they are having to spend entirely too much time bargaining and negotiating with unions, and this takes away from time that could otherwise be devoted to training.

I remind you that the unions are now in the process of trying to remove regulations that require that the technicians be members of that unit which employs them. The unions are trying to remove the requirement that the military uniform be worn during normal working hours. Mr. Chairman, in 29 States, the unions have been negotiating to not require the wearing of the military uniform during working hours. This is at an impasse and has been referred to the Federal Labor Relations Council. They don't even want to wear the uniform any more.

Are we going to support the commanders who bear the responsibility for an effective Reserve or National Guard program, or the union officials who have opposed their legislation? Many of the unions have little or no knowledge of the mission of the Reserve components. If we fail to enact this amendment we will in the foreseeable future be faced with a much more difficult issue with respect to the future of the technician program.

Mr. Chairman, I know that the argument will be used that if this amendment is adopted it might result in rejection of the entire bill. I do not believe this.

Why take action on only a portion of the military force that must defend our country directly, and leave a major portion of those forces, the Reserves, to the mercy of the unions?

Mr. Chairman, somewhere down the line we are going to have to put the defense of the Nation above any individual or group of individuals, and this amendment will do just that.

The CHAIRMAN. Mr. Wilson.

Mr. CHARLES WILSON. There is a technicians' union now.

I wonder if the gentleman can give any specific examples of how the Army or any part of the military has been damaged as a result of the existence of this union or the activities of the technicians? Can you tell us what damage has been done?

Mr. MONTGOMERY. Yes, this has become a critical issue, especially in New York State where the commanders are almost spending more time negotiating on technician union contracts than they are on actually bringing the unit in and carrying on the training.

As I said, 29 States are now in the position of negotiating whether the technician will wear the military uniform when he is at work in the daytime. In fact, the Labor Relations Board has said they are not required to wear the uniform in two of these States. They are now in the negotiation process.

Mr. CHARLES WILSON. If you go down to the Legislative Liaison Office you will find active military people wearing civilian clothes. I saw Scooter walk in here. He doesn't have his uniform on today. In fact, technicians when they are in a civilian status are not less military than the military people we see around here.

Mr. MONTGOMERY. Do you want to let all the standards, down; is that what you are saying—long haircuts, no haircuts, beards? I think we need to keep some standards.

Mr. DAVIS. Does the gentleman yield to me?

Mr. MONTGOMERY. Yes; I yield to you.

Mr. DAVIS. I thank General Montgomery for yielding.

General, answer one thing. In these negotiations that you have been talking about, have they been really during the civilian status of the job, or have they impinged on the planning of the weekend to where the guard unit itself has not done its routine activity of drilling on the weekend. Have these negotiations been while these people were in military status, or have they been in a total civilian capacity?

Mr. MONTGOMERY. They are not civilians, Mendel. Their mission first is to the military.

Mr. DAVIS. If they are military then are they covered by the UCMJ, Uniform Code of Military Justice? Do they come under that?

Mr. MONTGOMERY. They do when they are on active duty.

Mr. DAVIS. When they are on active duty. Working as a civilian during the week, the 40 hours, are they covered then?

Mr. MONTGOMERY. They can be disciplined by their commanders and by the adjutants general, and if they abuse any of the laws of the military, they can be prosecuted.

Mr. DAVIS. You didn't answer my question.

Are they governed by civilian law or the UCMJ?

The CHAIRMAN. One at a time.

Mr. MONTGOMERY. One question at a time; I agree.

I can get a definite answer for the record.

Mr. DAVIS. I can give you a definite answer for the record. No; they are not.

Mr. MONTGOMERY. Well, to answer your first part about negotiations they have hindered the training. They take this time to negotiate during regular working hours. In the testimony as a matter of record, some technicians were negotiating whether they should have to come to weekend drills.

This is a State matter also. These technicians have an obligation to the States. Some of the technicians today are riding herd in West Virginia and Ohio, bringing these trucks of coal in to help the people.

You have got to have some restraints on them. They have gotten totally out of hand, Mendel. This amendment would allow them to be members of the unit, but they could not bargain and they could not negotiate. This circumvents the problem.

Mr. DAVIS. Will the gentleman yield?

Mr. MONTGOMERY. Yes, sir.

Mr. DAVIS. Why do you separate and segregate and discriminate against the union technicians in the National Guard when you have the same corps under the regular reserve program. Under the ART program a man has to be a member of the Air Force Reserve to work. But in your amendment you just discriminate against one small segment, the National Guard, and I ask you why?

Mr. MONTGOMERY. That is not correct at all. Your biggest problem with technicians is in the National Guard. What I am amending is title 32, the National Guard.

You are correct, under the reserve program they are classified as civilians. That is why I am not amending that part of the law.

I am amending that part of the law title 32, National Guard, that says they are military technicians. I am not amending the reserves because they are classified differently. Does that answer your question?

The CHAIRMAN. Mr. Stratton.

Mr. STRATTON. Mr. Chairman, I would like to respond to the gentleman's proposed amendment and to a post amendment on behalf of the subcommittee.

Let me just say, Mr. Montgomery has raised what is, of course, the vital issue in this legislation, the one that the committee wrestled with for a number of weeks. It is a difficult and complicated issue, both in substance and in terms of political realities.

Let me just try to comment on what is involved here, because I think it is fair that the gentleman from Mississippi has brought this up before the full committee. The full committee ought to have a vote on it, although I think it should be pointed out that the members of the subcommittee do not necessarily represent a clique for organized labor. Yet members of the subcommittee voted unanimously for the bill as reported without the provision that the gentleman from Mississippi seeks to restore.

First of all, the gentleman's amendment as has just been pointed out by the gentleman from South Carolina refers only to technicians in the National Guard. That still leaves the problem of technicians in the reserve. We are going to create, if we accept his amendment, two categories of technicians. That would complicate things even further.

Second, I certainly do not pretend to be a constitutional lawyer. But I did say in my statement that the wording as it appeared in the original Senate bill, which simply said that members of the Guard who are technicians shall be regarded as being subject to the provisions of this ban in their civilian capacities, as well as in their military capacities.

Mr. Griswold told us that was clearly unconstitutional. You couldn't infringe on their civilian rights in that way. So the gentleman's amendment, which was proposed originally by the National Guard Association, tries to avoid that constitutional problem by placing no ban on the civilians, but placing a ban on the members of the Department of Defense and the Armed Forces not allowing negotiating with any such individuals. As I say, I am not a constitutional lawyer and whether that avoids the constitutional problem or not, I don't know. But I think a case could be made for saying that this simply does through the back door what was not permitted through the front door.

There are two other things that I think are equally important and should not be forgotten. What we say in our statement on page 15

we concluded, in enacting a sound bill to prohibit unionization of active military personnel, is a highly important thing right now, as Mr. Beard said just a moment ago. We don't want to see this bill jeopardized by a subordinate issue that could not only, perhaps, involve a legal contest on the part of the unions, but might simply get the bill voted down on the floor of the House.

The bill has been referred sequentially to the Post Office and Civil Service Committee, and the Post Office and Civil Service Committee violently opposed this particular section. If we were to bring the bill out with the Montgomery amendment we would have a fight on the House floor, which could jeopardize this particular legislation.

I don't think anybody in this committee wants to see the Active Duty Forces unionized. That is what we are trying to prevent. I think we ought to get the legislation out and get it enacted as quickly as possible.

Now, it is true, as Mr. Montgomery has said, we had a lot of testimony, particularly from General Castellano, from New York State, that a good deal of time was devoted on the part of senior National Guard officers negotiating with the union over what appeared to many of us to be rather trivial matters. This matter of the wearing of the uniform was definitely involved. Many of us felt that this was not the kind of thing that ought to require a great deal of time in negotiations.

But the fact of the matter is we don't want to risk the bill itself by this kind of a ban. It ought to be pointed out that if this problem that Mr. Montgomery refers to is so great that it is upsetting the operation of the National Guard and the Reserve, the Department of Defense has a very simple "out" by switching from using civilians for these functions to using active duty personnel, which doesn't require any act of Congress, as far as I know.

I am not sure that they would want to do that. It is a question of knowing whether you can attract enough active duty personnel to do that job, or whether it is easier to put up with some of the annoyances of negotiation that have been referred to. But that is a separate matter and ought to be left to the Department of Defense to determine which is the best way to proceed, rather than to insert this amendment and jeopardize the passage of this bill.

The CHAIRMAN. The gentleman is recognized on his own time.

Mr. KAZEN. Yes, sir.

I ask the gentleman, how many technicians are we talking about?

Mr. STRATTON. We are talking about 8,000, isn't it? About half of the technicians—

Mr. MONTGOMERY. 50,000.

Mr. LALLY. 50,000 to 60,000 for the technicians generally.

Mr. STRATTON. No, the number who are actually members of the unions?

Mr. LALLY. Approximately 8,000 are members of the several unions.

Mr. STRATTON. Only about 8,000.

Most of them are concentrated in two or three different States.

Mr. MONTGOMERY. Let the record show it is 25,000.

The CHAIRMAN. Does anybody know the accurate figures?

Mr. STRATTON. I think the actual number that were members of the union represented about one-half of the members.

Mr. KAZEN. I imagine that testimony came out before the subcommittee.

Mr. STRATTON. It did, yes.

Mr. LALLY. There was testimony before the subcommittee, Mr. Kazen. The number in units which are represented was about 25,000, I believe.

Mr. STRATTON. My recollection is that the number who were actually members of the unions was about 8,000. I may be wrong. Maybe it is 10,000 or 12,000, one-half of the 25,000, I think.

The CHAIRMAN. Mr. Daniel.

Mr. DAN DANIEL. Mr. Chairman, I would like to associate myself with the remarks made by the gentleman from New York, Mr. Stratton, and yield my time to Mr. Montgomery.

Mr. MONTGOMERY. Thank you for yielding.

I will be very brief to answer some of the remarks that Mr. Stratton has made.

He brings up an excellent point, that probably totally unionizing the technicians will kill the program, and the Defense Department will have to move to start bringing these technicians on active duty, and they would take it to the State at the time. In effect, the technicians are killing their own program by having them unionized, and the technician program has been a good program.

I might also say, Mr. Chairman, that the amendment that I have offered is endorsed by every adjutant general of all of the States. It should be pointed out again, in the subcommittee bill you are really buying a half a loaf. You are taking care of the Regulars. They won't be unionized, but that is really not where the problem is. The problem is with the technicians. They have already been unionized and they have got to be brought under some control.

Under my amendment, the contracts that are now in effect with the technicians would continue as I understand it. We would not change that, but after these contracts ran out, my amendment would go into effect.

I know it is a tough vote on the members, but it has merit to it, and as I said in the latter part of my statement, somebody has got to put the defense of this country before individuals or before union organizers.

MONTGOMERY AMENDMENT TO S. 274

Amend S. 274 to add:

Section 709(g) of title 32, United States Code, is amended by adding new clause (3) at the end thereof, to read as follows:

"(3) The Department of Defense may not accord recognition or consultation rights to an organization for the purpose of representing technicians who are required to be members of the National Guard as a condition of their employment. No officer or employee of the United States, member of the armed forces, or adjutant general referred to in section 314 of this title may enter into an agreement with any organization with respect to the terms or conditions of employment of technicians referred to in the preceding sentence."

Mr. KAZEN. Will the gentleman yield for a question?

Mr. DAN DANIEL. I yield to the gentleman.

Mr. KAZEN. According to Mr. Stratton, we are dealing with the rights of National Guard and Reserve technicians. The general from Mississippi says it only applies to the National Guard situation. Who is right?

Mr. DAN DANIEL. I yield.

Mr. MONTGOMERY. I think we are both right, in that my amendment would only apply to the National Guard technicians. There is a section of the law, section 32, that pertains to National Guard. It says they are National Guard technicians and their primary mission is military.

There is not a section like that in the Army or the Air Reserves. There is no section like that. So there is no section for me to amend. The problem is mainly in the National Guard which is why I have not offered the amendment to bring in the Reserves.

Mr. KAZEN. So we will actually have two categories of technicians: One that comes under your amendment and one that does not.

Mr. MONTGOMERY. Actually, you have two categories now. You have technicians in the National Guard that are controlled by the adjutant generals and the Governor of the States. Then you have the Reserve technician program, which is controlled by the Defense Department. So really you have two categories at this time.

Thank you.

The CHAIRMAN. The question is on the amendment offered by Mr. Montgomery.

Those in favor of the amendment will vote "aye."

Those opposed will vote "no."

The "noes" appear to have it.

The "noes" have it.

Mr. MONTGOMERY. I would like to have a rollcall.

The CHAIRMAN. Those in favor of taking this by rollcall raise their right hand.

There is a sufficient number and a rollcall is in order.

[Rollcall vote taken.]

Mr. FORD. Mr. Chairman, on this vote there are 19 "nays" and 5 "ayes."

The CHAIRMAN. The amendment is not approved.

Mr. BENNETT. I have a very brief and relatively unimportant amendment.

The CHAIRMAN. Mr. Bennett.

Mr. BENNETT. I offer an amendment, line 18, page 7, to strike out the words "and unquestioning." This is just a matter of taste, but to me to say you couldn't question any lawful order would be to turn the tide of history. There have been plenty of very successful questioning which had to do with winning wars. I just don't think it is wise for us to use such stultified language as "unquestioning" before obedience—in line 18, page 7. I would just like to strike the words "and unquestioning."

There is no reason why we should go on record as saying you have got to have an unquestioning mind on the part of somebody with regard to an order. There have been plenty of orders which have been changed because there were questions and plenty of battles won because things were questioned.

I think it is a stultifying thing to put in the language. I think it is just as strong and just as good and much more appropriate and reads better if you say "disciplined and prompt obedience," and leave out unquestioning.

The CHAIRMAN. Is there objection to the amendment?

Mr. STRATTON. I wonder if Mr. Lally could give us any legal opinion as to whether this might create some problem, or appear to be raising the opportunity of unlimited discussion before obedience sets in. The word is simply taken from the Senate language. I have no objection to it, but I would like to ask counsel to comment.

Mr. LALLY. I don't think it would impair the bill reported by the subcommittee in any way, Mr. Stratton. It was taken, as you say, from the Senate bill.

Mr. STRATTON. I have no objection.

The CHAIRMAN. Without objection, the bill is so amended.

Mr. White.

Mr. WHITE. Mr. Chairman, I offer an amendment principally by way of discussion. I would strike on page 10, lines 20 and 21, and renumber the subtitles and subsections, accordingly.

To be heard on my amendment, I came in a little bit late, maybe this has already been discussed. Looking at the total bill, I find no great problem with the bill, except this particular two lines, which states that it shall be unlawful for a member of the Armed Forces knowing of the activities, objectives of military labor organizations to join or maintain membership in such organizations or—the reason I raise the point is this: I think this would be unconstitutional. I think that you are placing in jeopardy the entire bill to include this section, because the Constitution says you have a right to assemble.

I think you would really be jeopardizing the finality of this bill by keeping that section in.

Mr. STRATTON. Would the gentleman yield to me?

Mr. WHITE. Yes; sir.

Mr. STRATTON. I think the gentleman missed the introductory statement explaining this. I think it was an eloquent statement, if I say so, and persuasive.

But the whole point of the bill is to prevent membership in a military labor organization, and a military labor organization is specifically defined in the bill in detail as one designed to negotiate over the conditions and terms of military activities. The gentleman's amendment would, in effect, gut the bill.

Let me say, on the legal point, I don't pretend to be a constitutional scholar. I spent only 4 weeks at the Harvard Law School, so I wouldn't offer my opinion, but Dean Griswold, the former Solicitor General, said that this, as drafted, is constitutional. But if you refer to the technicians in their civilian capacity, then we are getting on unconstitutional grounds.

Mr. WHITE. Let me pursue my point further.

The major provisions, the major actions that you are trying to obviate are the negotiations with the labor unions, with the opportunity to refuse or to resist any kind of orders. They are not necessarily saying a person can't join a union or join some union, as such.

Mr. DAVIS. Will the gentleman yield?

Mr. WHITE. I yield.

Mr. DAVIS. If you read the preceding paragraph, it is talking about prohibiting from joining and participating in the activities of a particular military organization when the objectives of that organization are known. This does not mean a regular labor organization. If he wanted to be a musician, he could still belong to the musicians union.

Mr. WHITE. But you don't define "knowing of the activities or objectives." You don't say that.

Mr. DAVIS. This is purely a military labor organization. That is pretty descriptive, Mr. White. If you take out lines 20 and 21, what you are saying is, let's vote down the bill totally and completely. And I don't think that is your objective, but that is exactly what you do.

Mr. WHITE. I am trying to preserve the bill. You don't have a severability clause in this bill either, that I can find. Without it, the whole bill would fail if a portion of it were found unconstitutional. If you have a severability clause, then the rest of it would survive.

The CHAIRMAN. The question is on the amendment.

Those in favor vote "aye."

Those opposed vote "no."

The "noes" appear to have it.

The "noes" have it.

Mr. WHITE. Mr. Chairman, I have one other amendment.

The CHAIRMAN. Mr. White.

Mr. WHITE. Mr. Chairman, I would like to draft on the end of this bill a clause to be drawn by counsel, a severability clause. In the event any portion is found unconstitutional, the balance of the bill would survive.

The CHAIRMAN. Do you have an amendment?

Mr. WHITE. I would like to present an amendment.

The CHAIRMAN. What is the amendment?

Mr. WHITE. If any portion of this bill were to be found unconstitutional, the balance of the bill would be enforced. That is often found in bills; is that correct, Counsel?

Mr. LALLY. It would not harm the bill.

Mr. WHITE. It might save the bill in the event it was found unconstitutional in that feature.

Mr. LALLY. That is true.

Mr. WHITE. I am trying to help, Mr. Chairman.

Mr. STRATTON. I would just like to ask again. I hesitate to tangle with the distinguished attorney from the State of Texas, but are there any sections that could be separated in this bill? It seems to me the bill is directed toward one specific matter.

Mr. LALLY?

Mr. LALLY. It is an integral package, Mr. Stratton.

I don't think we could separate it.

Mr. STRATTON. I don't have any objection to it.

Mr. DAVIS. I believe the bill is drawn where it is as a unit, performs as a unit, and the constitutionality of the entire bill depends upon it as a package.

Mr. WHITE. Section 1 could be separated out and still the bill could provide its purpose.

Mr. DAVIS. If section 1 is separated out, you don't need the bill, Mr. White.

Mr. WHITE. Oh, yes, you do.

Mr. DAVIS. So the whole thing should fall?

The CHAIRMAN. The question is on the amendment.

Those in favor vote "aye".

Those opposed vote "no".

The "no's" have it.

The amendment is not agreed to.

Mr. Badham.

Mr. BADHAM. May I ask unanimous consent to change my vote from aye to nay.

The CHAIRMAN. Without objection, it is so ordered.

Mrs. Holt.

Mrs. HOLT. May I ask unanimous consent to cast an aye vote on Mr. Montgomery's amendment.

The CHAIRMAN. Without objection.

Mr. STRATTON. Mr. Chairman, I have a parliamentary question. I don't mind letting members of the committee get on record, but where do we stand on totals?

The CHAIRMAN. This is the purpose of the record. This is for the purpose of the record.

Mr. MITCHELL. I ask unanimous consent as voting aye to Mr. Montgomery's amendment.

The CHAIRMAN. Without objection.

Mr. Wilson.

Mr. BOB WILSON. I wonder if I might ask a parliamentary question or at least a question of counsel.

In that paragraph that Mr. White was talking about, on page 10, where it says, on line 17, it shall be unlawful for a member of the Armed Forces knowing of the activities or objectives of a particular military labor organization. The way this is worded, does this allow a nonmilitary labor organization, let's say, the Teamsters to come in and organize military personnel, get them into their union and work on their behalf?

Mr. LALLY. If they satisfy the criteria set out, Mr. Wilson, in subsection a-2, which specifies the military organization. If they seek to represent individual members in grievance proceedings, or if they seek to strike, picket, et cetera, to induce negotiations or bargaining or recognition or making a change in the terms and conditions of service, they would be a military labor organization, yes, sir.

Mr. BOB WILSON. I understand.

Thank you very much.

The CHAIRMAN. The question is on the approval of the bill.

Those in favor vote aye when their name is called, and those opposed will vote no.

The Clerk will call the roll.

[Rollcall vote taken.]

Mr. FORD. Mr. Chairman, on this vote there are 25 ayes, no nays, and two members voting present.

The CHAIRMAN. The bill is passed.

Mr. BOB WILSON. Mr. Chairman.

The CHAIRMAN. Mr. Wilson.

Mr. BOB WILSON. Mr. Chairman, I move the chairman be authorized to close the meeting for this and one subsequent session when he determines it is required for national security purposes.

The CHAIRMAN. The motion requires a recorded vote.

The Clerk will call the roll.

[Rollcall vote taken.]

Mr. FORD. Mr. Chairman, on this vote there are 25 ayes and no nays.

The CHAIRMAN. The motion is agreed to.

Mr. STRATTON. Mr. Chairman.

The CHAIRMAN. Mr. Stratton.

Mr. STRATTON. I neglected to point out we do have to also amend the title of the bill as outlined on page 14 of the text of the legislation.

I move that the title be amended as indicated.

The CHAIRMAN. Without objection, the title will be amended.

Mr. STRATTON. Also, Mr. Chairman, that the record may be corrected, the exact figures with respect to those technicians who are members of the union is the figure 20,000, and they represent units in which 37,000 technicians are included.

The CHAIRMAN. Without objection, the gentleman's remarks will be included with that section of the bill as it was discussed before adoption.

[Whereupon, this portion of the hearing ended at 11:01 a.m.]





