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Report to Congressional Requesters

April 1992

BASE CLOSURES

Long and Costly Process of Reducing the Local National Work Force in Germany

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Chairman, Subcommittee on Defense
Committee on Appropriations
United States Senate

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Committee on Armed Services
United States Senate

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This report responds to your request that we review U.S. obligations to its local national work force in Germany resulting from the drawdown of U.S. forces. We address other financial obligations between the U.S. and German governments associated with the drawdown of U.S. forces in a classified companion report.

We are sending copies of the unclassified report to the Secretaries of Defense and State. We will also make copies available to others upon request.

This report was prepared under the direction of Joseph E. Kelley, Director, Security and International Relations Issues, who may be reached on (202) 275-4128 if you or your staffs have any questions. Other major contributors to this report are listed in appendix IV.

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Executive Summary

Purpose

Because of the reduced Soviet threat, the United States is withdrawing its forces from Europe. Commensurate with the drawdown, the U.S. Army and Air Force plan to discharge about 27,200 of the 47,280 local German nationals they employ by the end of 1995.

The Subcommittee on Defense, Senate Committee on Appropriations, and the Subcommittee on Readiness, Sustainability and Support, Senate Committee on Armed Services, asked GAO to review U.S. and host nation financial obligations arising from base closures. In this report, GAO (1) identified the U.S. military's basic severance pay liability according to international agreements, (2) evaluated the potential for other costs increasing that liability, and (3) determined whether the Army and Air Force have sufficient funds to cover these liabilities.

Background

The Collective Tariff Agreement, which governs U.S. employment of local nationals in Germany, establishes severance pay entitlement and sets the maximum amount payable. Benefits paid by Germany can offset the U.S.'s liability by up to 40 percent. In December 1991, the maximum amount payable per employee increased from 4 months salary to 7 months.[1] U.S. liability may also be affected by German labor law. For example, the German Termination Law could require reemployment or severance pay as high as 18 months earnings if a labor court finds that a local national was wrongfully terminated. In addition, the German Personnel Representation Law, together with the Tariff Agreement, creates a lengthy process for terminating local nationals. The Representation Law requires a U.S. employer to cooperate with labor representatives on termination actions, a process that generally takes 3 or more months to complete. The Tariff Agreement requires U.S. employers to notify employees of impending terminations 1 to 9 months before the actual release date.

Results in Brief

In June 1991, the U.S. military's average severance pay liability calculated under existing Tariff Agreement provisions was about $3,000 per person, or about $144 million, assuming all 47,280 U.S. local national employees in Germany are eligible for full severance pay. The U.S. severance pay liability may decrease if terminated local nationals find jobs elsewhere.

[1]As of February 1992, a new tariff agreement providing increased benefits to local nationals had not been signed by the parties, but it was expected that it would soon occur. References to that agreement used in this report are as if it had been signed.

However, the U.S. liability is not limited by the Tariff Agreement and can be increased by German court decisions favoring terminated local nationals. During recent base closures, many local nationals have won settlements averaging over $5,200, and litigation fees have averaged $4,000 per case. To reduce the probability that future terminations would be legally contested, the United States recently reached agreement with the German labor unions on an indemnity plan that provides greater benefits to employees affected by the drawdown. U.S. liability under the indemnity plan is about $4,400 per person. If employees still choose to litigate for higher settlements, the United States, in conjunction with burden-sharing initiatives, could request that the German government bear the additional costs.

Because the German labor termination process is lengthy, if the United States fails to consider this timing in making base closure announcements, it may have to pay salaries to employees after their job sites are closed in addition to severance pay. Delays in processing termination notices and announcing base closures may result in the Army and Air Force combined paying up to $4.1 million in unearned salaries to 405 employees without a job site or work requirements. Moreover, the Army and Air Force may require additional appropriated funds to pay for termination costs.

Principal Findings

Some Employees Will Not Receive Severance Pay

Not all local nationals eligible for severance pay will be receiving severance under the current drawdown. Some employees will find other jobs with the U.S. forces. U.S. Army officials said that the current hiring freeze, coupled with a 7-percent attrition rate, will allow them to reassign many to other jobs. In addition, under the existing Tariff Agreement, local nationals who find employment in the local economy could have their severance pay reduced or eliminated. During the current drawdown at several Army installations that recently closed, only 41 percent of local nationals were eligible for severance pay because many found jobs within or outside the U.S. military. For future closures, the percentage of employees eligible for severance pay may increase as job opportunities with the U.S. military become harder to find.

Litigation Increasing Severance Costs

The U.S. Army paid 101 employees at three closing bases an average out-of-court settlement of over $5,200 after they contested their terminations in German labor courts. A few of those employees were paid over $10,000 in settlements. The Army paid these settlements because it believed labor courts generally favor employees and would interpret any mistakes in the termination process, even of a minor nature, as violations of German guidelines.

To obtain a new tariff agreement with increased benefits, labor unions organized demonstrations and warning strikes and encouraged terminated local nationals to litigate. Local national employees at four military bases are currently contesting their terminations, and judges in at least three courts have either ruled or indicated they would rule in favor of the employees.

U.S. Military Attempts to Reduce Litigation With New Tariff Agreement

The U.S. military and other nations employing local nationals, along with German government officials, met with labor unions to negotiate a new tariff agreement that might reduce litigation and associated costs by increasing severance benefits. The so-called indemnity plan, concluded in December 1991, increases the average payment to $4,400 per employee, thereby increasing the total potential liability from $144 million to $207 million. The U.S. military is hopeful that the indemnity plan will convince employees not to litigate because a successfully negotiated agreement would generally be defensible in court and the plan will achieve savings by cutting settlements and litigation costs. However, potential savings from the indemnity plan will be offset by higher costs resulting from employees who might not have litigated receiving higher benefits. In addition, some employees may still successfully sue for higher settlements.

Due to other overriding considerations, U.S. Embassy officials in Bonn have not followed through on the request of the Commander in Chief of the U.S. Army, Europe, to approach the German government about bearing a larger share of local national employment costs, including termination costs. More recently, the Department of State is planning bilateral burden-sharing initiatives with Germany. These initiatives will include discussions on such items as employee bonuses and health care cost.

Delays in Termination Process Result in Unnecessary Payroll Costs

The termination process is lengthy and complicated, and U.S. military employers must begin the termination process early to avoid paying employees after their job sites are closed. German labor courts disagreed with some aspects of the termination process, which resulted in the Army paying almost $800,000 in unearned salaries to 49 local nationals at two locations. These cases included a failure to promptly initiate the termination process or respond to work councils' appeals. The U.S. Army has increased resources and training to prevent similar delays from occurring at future closures.

In addition to processing delays, late announcements of closures or troop deactivations may also contribute to unnecessary payroll costs because the termination process cannot begin until such announcements are made. For example, delays in announcing the closure of Hahn Air Base and two Army installations may result in unnecessary salary payments of up to $3.3 million to 356 local national employees with no job site or work requirement. The Hahn closure was partially delayed by complications in the host nation consultation process. Department of Defense officials expect that employees accepting indemnity pay may depart prior to the expiration of the lengthy notice period, which will reduce payroll costs.

Accounting and Budgeting for Severance Pay in Germany Needs Improvement

The Army and Air Force in Europe did not budget and obligate funds for their severance pay liability as it was being incurred. The severance liability was recognized after the fact, and funds were obligated when payments were made rather than when the liabilities were incurred. In December 1990, U.S. Army, Europe, obligated $158 million to cover the potential termination costs for all its local nationals based on settlements that averaged $3,200 or higher. GAO's analysis of employee records shows the Army's severance liability in Germany is approximately $126 million under the Tariff Agreement and $183 million under the current indemnity plan. GAO believes that employment records provide a better basis for estimating the potential severance liability and obligating funds. Recent legislation establishing a foreign national employees' separation account will lead to the military services budgeting and reconciling their severance liability.

Recommendations

GAO recommends that the Secretary of State approach the German government about assisting in financing the U.S. military drawdown by bearing the additional costs of local national termination resulting from delays in base closures requested by the German government. GAO also

recommends that the Secretary of State include severance payment costs that exceed the provision of the Tariff Agreement and the indemnity plan as part of the Departments' bilateral burden-sharing initiatives.

To avoid paying unearned salaries, such as those anticipated at Hahn Air Base and various other locations, GAO recommends that the Secretaries of Defense, the Army, and the Air Force endeavor to announce closure and deactivation dates in adequate time to terminate employees without incurring added financial liability.

To ensure the availability of funds for anticipated base and facility closures, GAO recommends the Secretary of Defense direct the Secretaries of the Army and Air Force to establish a consistent policy and procedures for severance pay accounting in Germany. These procedures would provide for the accounting of severance pay on an accrual basis using employee records to estimate the liability and provide for the annual reconciliation of the severance account.

Agency Comments

The Departments of State and Defense commented on a draft of this report. The Department of State suggested that the United States should not approach the German government about financing an increased share of local national termination costs at this time due to overriding considerations. These considerations include the ongoing review of the Supplementary Agreement to the North Atlantic Treaty Organization (NATO) Status of Forces Agreement and the NATO-wide and bilateral burden-sharing initiatives being undertaken by the United States. GAO believes that it may be the appropriate time to introduce local national termination costs that exceed current agreements as part of the burden-sharing initiatives.

The Department of Defense concurred with GAO's recommendation to establish proper accounting procedures to accrue and reconcile severance payments. On announcing base closures as early as practicable to avoid additional costs, it responded that it endeavors to do so, but it does not have complete control over the lengthy base closure decision-making process because other interested agencies in the U.S. government and the foreign government can affect the length of the process.

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Abbreviations

DOD	Department of Defense
GAO	General Accounting Office
NATO	North Atlantic Treaty Organization
USAREUR	U.S. Army, Europe
USAFE	U.S. Air Force, Europe

Introduction

Since the end of World War II, U.S. forces have employed local nationals in Germany to help operate and maintain military bases and facilities. As of June 1991, about 47,280 were on U.S. payrolls. As U.S. troops withdraw and bases are closed, thousands of these employees will lose their jobs and, according to existing agreements, the United States will owe severance pay to many of them.

Local Work Force Will Be Reduced

As of September 1991, the United States military planned to complete the U.S. drawdown from Germany by the end of 1995. As U.S. troops are withdrawn and military installations are returned to German control, military plans identified about 27,200[1] local national job positions that will no longer be needed. Table 1.1 shows how many positions will remain if the projected drawdown continues as planned.

Table 1.1: Planned Reductions in Local National Work Force in Germany
(as of 1991-1992)

	Fiscal year 1991 work force	Planned reductions	Fiscal year 1995 work force
Army	41,892	25,000	16,892
Air Force	5,388	2,201	3,187
Total	**47,280**	**27,201**	**20,079**

The number of employees released could increase if Congress continues to target budget reductions and fix hiring ceilings for local nationals. Legislation passed in fiscal year 1991 would have required a 25-percent reduction in the employment cost of foreign nationals at military installations. However, the Secretary of Defense exercised the authority provided in the law to waive this requirement and cut the local national budget by less than 25 percent. The 1992-93 Defense Authorization Act set ceilings on the number of local nationals hired by the Department of Defense (DOD) through the host governments (called "indirect hires"). These ceilings are 60,000 in fiscal year 1992 and 47,750 in fiscal year 1994. Thereafter, budget reductions would be achieved through cost sharing with the host government. Germany is most affected by these legislative limits because the majority of the indirect hires are in Germany.

[1]In February 1992, the U.S. Army increased its estimate of positions to be eliminated from 15,700 to 25,000.

Determining Termination Costs Is a Complicated Process

Under the terms of the German Supplementary Agreement to the North Atlantic Treaty Organization (NATO) Status of Forces Agreement,[2] both the Collective Tariff Agreement and German labor law can affect termination costs of local national employees. The Collective Tariff Agreement defines the United States' severance pay liability to its former employees and allows other benefits paid by the German social system to offset this liability. However, U.S. liability can be increased by decisions of the German courts when terminated local nationals file suit based on German law. In addition, the United States is required to pay employees their full salary during the complicated and lengthy termination process established under German law.

Basic U.S. Liability Established by Collective Tariff Agreement

Pursuant to the German Supplementary Agreement, the German government, in conjunction with the United States and other nations with forces stationed in Germany, negotiated the Collective Tariff Agreement with German labor unions to establish basic conditions of employment. In addition to other conditions of employment, the Tariff Agreement establishes a severance pay formula, based on years of service, and eligibility requirements. The entitlement is one-fourth of a month's salary for each continuous year of employment, with a maximum of 4 months salary.

Under this agreement, not all U.S. local national employees in Germany will become eligible for severance pay when separated. Those ineligible include employees who

- are under age 21 or have less than 2 years of service with U.S. forces,
- reject a reasonable alternative job offer with the U.S. military,
- enter into new gainful employment before receiving their full severance pay,
- are separated with cause, or
- receive an indemnity payment.

The reason for termination is important in determining eligibility for severance pay. If termination is a result of a reduction in force, such as the current drawdown, then some employees who would otherwise be

[2]NATO countries entered into the Status of Forces Agreement in 1951 to define in broad terms the rights and obligations of NATO forces while in the territory of another party. The German Supplementary Agreement to the Status of Forces Agreement more specifically addresses the rights and obligations of NATO forces in Germany.

ineligible for severance pay (because they intend to resign or whose employment might be terminated based on mutual agreement) would become eligible. On the other hand, older, long-term employees who are generally entitled to transition pay[3] from the U.S. military would receive only severance pay under the current drawdown because these employees would qualify for German-funded benefits under the Social Security Agreement.

Benefits Paid by German Government Can Reduce U.S. Liability

The German government provides additional benefits to terminated local national employees that, in some cases, reduce the U.S. liability and, in other cases, add to employee benefits. These benefits do not increase the U.S. liability.

Under the terms of the Collective Tariff Agreement, U.S. severance pay liability is reduced by the amount of unemployment and retirement benefits owed by the German government to employees eligible for severance pay. According to U.S. military officials, unemployment and retirement benefits generally reduce the U.S. severance liability by about 40 percent.

When reductions in force are due to military reasons, such as the current drawdown, German Social Security Agreement benefits supplement U.S. severance payments for some employees. These benefits, paid by the German government, ensure that older, long-term employees of the U.S. military receive the equivalent of 100 percent of their last earnings for the first year of unemployment, and 90 percent for the second year (minimum) until the time of mandatory retirement (maximum), depending on age and years of service. About one-third of the current U.S. local national work force is potentially entitled to this benefit.

New Indemnity Plan Increases Employee Benefits

As a result of negotiations between the German labor unions, the United States, and other nations with forces stationed in Germany,[4] a new Tariff Agreement was concluded on December 6, 1991, which provides greater

[3]Under the Collective Tariff Agreement, employees age 40 or older with 10 or more years of service are eligible for transition payments instead of severance pay. Transition payments entitle the employee to a maximum of 5 months salary instead of 4 months salary under severance pay. The entitlement to the extra month's salary does not apply if the employee qualifies for certain German-funded benefits under the Social Security Agreement.

[4]Other nations employing German nationals include Belgium, Canada, France, the United Kingdom, and the Netherlands. However, the Netherlands is not a party to the Collective Tariff Agreement.

benefits to employees affected by the drawdown. According to USAREUR, under the proposed new agreement, employees can now receive indemnity pay as opposed to severance pay which, among other things, entitles employees to one-third of a month's pay per year of service, up to 7 months. Employees are not entitled to indemnity pay if court action is pending or a court settlement exists. Other benefits of the indemnity plan are:

- Employees receive indemnity pay up front, whether they find employment in the local economy or not.
- Employees eligible for retirement benefits would receive an additional payment equivalent to 2 months salary.
- It is not offset by German unemployment benefits.
- It is not taxable.

The main benefit to the United States of the indemnity plan is to reduce the time and cost associated with litigation by reaching mutual agreement terminations under which employees agree not to go to court. Also, U.S. Army officials believe that should employees choose to litigate, the labor courts would view the new agreement favorably. Table 1.2 compares severance pay to indemnity pay by entitlement or provision.

Table 1.2: Comparison of Severance Pay to Indemnity Pay by Provision

Provision	Severance pay	Indemnity pay
Basic entitlement with 2 years service	1/4 month salary per year to a maximum of 4 months salary	1/3 month salary per year to a maximum of 7 months salary
Can sue for higher settlement	Yes	No[a]
Lump sum payment	No	Yes
Unemployment benefits offset pay	Yes	No
Pay ceases with new employment	Yes	No
Social security recipients entitlement	No additional payment	Additional 2 months salary

[a]Employees who sue lose their entitlement to indemnity pay but may still receive severance pay under the Tariff Agreement.

As of February 28, 1992, the new Tariff Agreement had not been signed by all parties, but U.S. Army, Europe, (USAREUR) instructed its staff to offer settlements based on the new agreement.

German Law May Increase U.S. Liability

Article 56 of the German Supplemental Agreement to the Status of Forces Agreement states that German labor laws are generally applicable to employment of local national civilians by the United States. The German Law on Protection From Termination of Employment protects German employees from what it describes as "socially unwarranted" termination actions. Employees who believe they have been wrongfully released have 3 weeks after receiving notice of termination to file suit in German labor court.

According to the Termination Law, a labor court may invalidate a termination action in situations where (1) the termination occurs for reasons other than employee conduct or urgent business requirements, (2) further employment with the same office or division in the commuting area can be expected, or (3) the employer violates established termination guidelines for selecting personnel for termination.

The Termination Law provides for reemployment of employees wrongfully terminated or, if continued employment cannot be expected, a severance payment with a maximum of 12 to 18 months salary, depending on age and years of service. U.S. officials familiar with the German legal system said labor courts generally award wrongfully terminated employees one-half to 1 month's salary per year of service. USAREUR officials said that reinstatement is generally more expensive than the court-awarded severance pay because the employee is entitled to back pay as well as full wages for the duration of any subsequent termination action.

Local National Employees Have Other Rights Under German Law and Tariff Agreement

The German Personnel Representation Law[5] and the Collective Tariff Agreement endow local national employees with additional rights that affect the termination process. The Representation Law requires works councils (employee representatives) to be involved in the termination actions prior to issuing notices of termination. Although military employers have final decision-making authority, works councils have the right to appeal decisions to higher levels of authority. The Collective Tariff Agreement entitles local national employees to advance notice of their termination by their military employer. These mandatory notice periods can range from 1 month to 6 months, depending on age and years of

[5]The German Personnel Representation Law of March 15, 1974, as modified by the German Supplementary Agreement, applies to NATO forces employing local nationals in Germany and establishes the right of employee representatives to participate in management decisions affecting employees.

service. The notice periods can be even longer (up to 9 months) because they must expire at the end of a calendar month or quarter, depending on the length of the notice period entitlement. The employee is entitled to full wages through the end of the advance notification period, whether employed or released from work.

Objectives, Scope, and Methodology

The Chairmen and Ranking Minority Members, Subcommittee on Defense, Senate Committee on Appropriations, and Subcommittee on Readiness, Sustainability and Support, Senate Committee on Armed Services, asked us to (1) evaluate potential U.S. liabilities associated with terminating the employment of local nationals as a result of the drawdown and (2) determine whether the Army and Air Force have reserved sufficient funding to cover these liabilities. Specifically, we

- estimated the U.S. military's basic severance pay liability according to international agreements,
- evaluated the potential for other costs increasing that liability, and
- determined whether the Army and Air Force have earmarked sufficient funds to cover these liabilities.

Based on consultations with congressional staff, we focused our review on U.S. liabilities in Germany, where almost one-half of the U.S. military's worldwide local national work force is employed.

To evaluate U.S. liability to local nationals, we examined relevant international agreements and pertinent German labor laws and interviewed legal and personnel officials with USAREUR and U.S. Air Force, Europe (USAFE). From the German Ministry of Finance, which oversees the Offices of Defense Cost that manage the payroll of local national employees of the U.S. military, we obtained actual data on the number of local national employees serviced by USAREUR and USAFE civilian personnel offices and their severance pay entitlement per the Collective Tariff Agreement. USAFE data reflects the number of employees and liability as of June 1991; USAREUR data reflects employees and liability as of July 1991. We did not test the reliability of the data provided by the German government. According to Air Force personnel officials, the data bases are audited by an independent German agency. Payroll tapes provided by the Offices of Defense Cost to USAREUR and USAFE are periodically sampled and reviewed by the services' audit agencies.

The data is further broken down into four groups by employee age and years of service: (1) less than age 21 or 2 years of service, (2) age 21 to 39 with 2 or more years of service, (3) age 40 or older but less than 10 years of service, and (4) 40 or older with 10 or more years of service. Group 1 represents employees not entitled to either severance pay or Social Security benefits. Groups 2 and 3 together comprise employees entitled to severance pay but not to Social Security benefits. Group 4 represents employees who are potentially entitled to both severance pay and benefits under the Social Security Agreement.

We calculated average severance pay data under the Collective Tariff Agreement by dividing the aggregate severance pay entitlement for Groups 2, 3, and 4 by the total number of local nationals (including Group 1). The result was reduced by 40 percent to reflect offsets to U.S. liability paid by the German government.

We also used this data to calculate the total and average cost of indemnity payments by the United States and offers made by other countries to labor unions during tariff negotiations. We used the figures for the numbers of local nationals, average salary, and years of service provided by USAREUR to compute costs and did not verify the accuracy of these figures.

To identify other potential liabilities, we interviewed officials and specialists in planning, personnel, and legal offices at the U.S. European Command, USAREUR, USAFE, and two closing military communities—the Munich Army Community and Zweibruecken Air Base. From these officials, we obtained background information regarding recent and anticipated termination actions. We discussed potential changes to international agreements with U.S. Embassy officials in Bonn.

To evaluate the cost of settlements resulting from litigation, we obtained detailed employee data on terminated employees at three Army communities (Rheinberg, Berchtesgaden, and Garmisch) from responsible personnel officials at Munich and Rheinberg. We computed their severance pay entitlement based on their individual salaries and years of service. We computed their years of service based on service start dates and termination effective dates provided by the responsible personnel officials. We were unable to compare entitlement to settlements in 4 of 106 cases, due to incomplete employee data.

We also used this data to determine the number of local nationals potentially eligible for severance pay. Based on the provisions of the

Collective Tariff Agreement, we considered employees ineligible for severance pay if they (1) were placed with the U.S. forces, (2) resigned before the effective termination date, or (3) were terminated with cause.

We used this same employee data to compute the cost of salaries paid to local nationals when they were not working. For unearned salaries to be paid to local nationals at Hahn Air Base, we used estimates provided by USAFE budget officials. For Schwaebisch Gmuend and Goeppingen, we estimated unearned salaries using data from USAREUR and the responsible Army personnel office.

From personnel officials at Munich and Frankfurt Army Communities and Zweibruecken Air Base, we obtained summary data on ongoing termination and court actions at Bad Toelz and Neu Ulm Army communities, Frankfurt Corps of Engineers, and Zweibruecken Air Base. We also attended a court hearing in a local labor court involving a German employee contesting his termination.

To evaluate the sufficiency of funds for severance costs, we interviewed budget and accounting officials at USAREUR and USAFE and obtained relevant documentation of regulations, policies, and practices. We further discussed Army budget and accounting practices with cognizant officials at DOD and two Army major commands in Europe.

We performed our audit work from July 1990 to February 1992 in accordance with generally accepted government auditing standards.

Litigation Contributes to Increased U.S. Severance Pay Liability

As of June 1991, the U.S. military employed 47,280 local nationals in Germany.[1] Our analysis shows that if all such employees were terminated today, the United States could be liable, under the terms of the Collective Tariff Agreement, for severance pay totaling $144 million, or about $3,000[2] per employee. However, initial terminations proved that the Tariff Agreement did not limit severance payments as intended. Many employees contested their termination in German labor court. Believing that the courts would rule in the employees' favor, the United States settled at an average severance payment exceeding $5,200 per employee plus court costs averaging $4,000 per case. To reduce the probability that future terminations would be legally contested, the U.S. military entered into an indemnity agreement with labor unions that increases average benefits to $4,400 per employee.

Due to budget constraints, the U.S. Army commander in Europe asked the State Department to approach the German government to help bear the costs of salaries and benefits paid Germans employed by U.S. forces. However, the U.S. government postponed the request because of the conflicting priority of obtaining German payments to help offset Desert Shield/Desert Storm costs.

U.S. Liability Under Severance Agreement Is About $3,000 Per Employee

Based on the Collective Tariff Agreement, we calculated the U.S. severance liability, on average, to be about $3,000 per employee.[3] If all 47,280 employees on the payroll in June 1991 were released and each received full severance pay, the total U.S. liability would be about $144 million. With time, the total liability would change as salaries and years of service increase and the exchange rate fluctuates. Table 2.1 shows the current severance liability by service.

[1]This figure represents employees paid with appropriated funds. This report does not address severance pay obligations to an additional 2,200 local nationals whose salaries are paid with nonappropriated funds.

[2]U.S. severance liability figures used throughout the report have been reduced by 40 percent to reflect offsets paid by Germany.

[3]The actual liability is in Deutchesmarks. The liability in dollars was computed using an exchange rate for June 29, 1991, of 1.8 Deutchesmarks to the dollar.

Table 2.1: Local National Severance Pay Entitlement by Service

	Number of employees	Severance pay	
		Total	Average per employee
Army	41,892	$126,358,408	$3,016
Air Force	5,388	17,602,516	$3,267
Total	**47,280**	**$143,960,924**	**$3,045**

Numbers and Economic Conditions Will Determine Actual Liability

Not all local national employees in Germany will be immediately affected by the drawdown. Based on base closures and unit reductions planned through 1995, the U.S. military estimated in February 1992 that as many as 27,201 local national positions in Germany will be eliminated by the end of fiscal year 1995. The eliminated positions translate into a potential near-term liability, under the Tariff Agreement, of $82.8 million for severance pay. As discussed in chapter 1, if the Congress continues to reduce DOD's local national budget and work force, many more additional positions could be cut. The U.S. military's short-term liability would be increased accordingly.

Under the terms of the Collective Tariff Agreement, the U.S. financial liability to those actually terminated would be reduced if former employees found other jobs in the German economy or deferred if employees are relocated to other U.S. military jobs not affected by the drawdown. As shown in table 2.2, at several recently closed installations, fewer than half of the employees on the payroll when the termination process began actually became eligible for severance pay.

Table 2.2: Local Nationals at Selected Communities Eligible for Severance Pay (as of July 1991)

Location	Total employees	Ineligible for severance pay			Eligible
		Reassigned	Resigned	Other[a]	
Berchtesgaden[b]					
Phase I	36	4 (11%)	6 (17%)	1 (3%)	25 (69%)
Phase II	52	7 (13%)	4 (8%)	9 (17%)	32 (62%)
Garmisch	27	19 (70%)	0	0	8 (30%)
Rheinberg	182	71 (39%)	49 (27%)	6 (3%)	56 (31%)
Total	**297**	**101 (34%)**	**59 (20%)**	**16 (5%)**	**121 (41%)**

[a]Includes employees not entitled to severance pay, e.g., still employed, deceased, or terminated with cause.

[b]Phase I terminations announced June 4, 1990, due to reductions throughout U.S. Army, Europe. Phase II terminations announced December 4, 1990, due to base closure. As of March 1992, Berchtesgaden and Garmisch remain partially open.

Although they could not predict how many employees would be provided other U.S. jobs, USAREUR personnel officials said the current hiring freeze, coupled with a 7-percent attrition rate, will allow them to reassign many to other jobs. However, they also said there are too few vacancies to place all affected employees and many jobs will disappear as more bases close. Inappropriate job qualifications and an unwillingness to relocate or commute to a new job site will prevent some local nationals from continued employment with the U.S. military.

According to USAREUR personnel officials, the number of employees that will find jobs in the German economy is also unpredictable. To help place former employees, USAREUR has increased outplacement assistance to local nationals affected by the drawdown. However, various U.S. officials said local job markets will still have difficulty absorbing terminated employees because (1) the United States is a major employer in many areas, (2) German military cutbacks will reduce job opportunities and create competition for available jobs, and (3) high unemployment in eastern Germany is already putting pressure on the job market.

Litigation Contributes to Increased Severance Costs

The average severance pay entitlement under the Collective Tariff Agreement is about $3,000, but some employees received over $10,000 by contesting their release under the German Termination Law. Army personnel officials believe terminations were contested because the Collective Tariff Agreement did not provide severance benefits comparable to "social plans" found in the private sector (see app. I). Anticipating that German labor courts would generally find in favor of employees, the U.S. Army settled out of court, paying litigants an average of $5,269.

Army personnel and legal officials said that most litigants were paid out-of-court settlements because German labor courts, generally sympathetic to employee interests, would have found that the Army did not fully comply with the Termination Law. Although settlements generally avoided final decisions by the labor courts, according to Army officials, labor court judges have indicated, and in a few cases decided, that the Army violated provisions of the Termination Law. For example:

- In the case of a recently closed Army community in Rheinberg, a local labor court indicated that the Army provided the works council with insufficient documentation on employees selected for termination.
- In the case of the initial phasedown of two Army communities in Berchtesgaden and Garmisch, a local labor court ruled that another nearby

military agency had vacant positions that were not offered to affected employees.

Table 2.3 compares severance entitlement computed under the Collective Tariff Agreement to settlements agreed to by the Army after litigation was initiated by employees from three separate communities.

Table 2.3: Comparison of Severance Pay Entitlement and Settlements Reached at Three Army Installations

Location (number of employees)	Severance pay[a] entitlement	Settlement	Percent increase
Rheinberg (43)	$57,756 (1,343)[b]	$133,000 (3,093)	130
Berchtesgaden			
Phase I (24)	55,849 (2,327)	151,556 (6,315)	171
Phase II (26)	94,580 (3,638)	208,080 (8,003)	120
Garmisch (8)	15,701 (1,963)	39,500 (4,938)	152
Total (101)	**$223,886 (2,217)**	**$532,136 (5,269)**	**138**

[a]Based on the Collective Tariff Agreement.

[b]Average per employee.

Even though settlements more than doubled the entitlement under the Tariff Agreement, USAREUR officials believe, in general, that these settlements are much less expensive than unfavorable court decisions. According to USAREUR and USAFE personnel officials, if a German labor court invalidates a termination, the U.S. military employer would have to either reinstate the employee and restart the termination process or pay a higher, court-imposed severance amount. In either case, the employee would be awarded back pay. The employer could hire a lawyer and appeal an unfavorable decision; however, Army officials said the appeals process is costly and generally takes more than a year. Litigation fees average $4,000 per case. In the meantime, the employee would be back on the payroll.

Table 2.4 uses statistics from recent terminations to illustrate, as military officials have suggested, that under the terms of the existing Tariff Agreement, continued litigation appeared likely.

Table 2.4: Percentage of Employees Who Contested Termination in German Labor Court at Four Locations in 1991

Location	Terminated	Litigated	Percent
Bad Toelz	143	118	83
Neu Ulm	337	171	51
Zweibruecken	228	63	28
Frankfurt	45	30	67
Total	**753**	**382**	**51**

Note: This table includes all local nationals who filed suit after receiving notices of termination. A number of litigants subsequently withdrew their suits, for example, after finding other jobs with the U.S. military.

Military personnel officials could not explain the reason for variations in the percentage of employees litigating, but suggested that factors such as the size of the community or the level of union membership or works council involvement probably played a role.

Unions organized labor actions to pressure the United States and other nations with military forces stationed in Germany to increase severance benefits. To obtain a new tariff agreement with increased benefits, USAFE personnel officials said labor unions organized demonstrations and warning strikes and encouraged terminated local nationals to litigate. Labor unions at two closing bases encouraged employees to become union members and receive free representation if they contested their terminations in labor court. Military personnel officials believe many German employees already carry legal insurance so they can retain a lawyer.

Both USAREUR and USAFE are channeling resources and increasing the training of civilian personnel office staffs to help improve chances that future termination actions will not violate the Termination Law. However, USAREUR and USAFE personnel officials believe that no matter how well they prepare their cases, the courts will remain sympathetic to labor, particularly as more employees lose their jobs. They said sympathetic courts can find grounds for invalidating terminations under the highly subjective aspects of the Termination Law. According to military personnel officials, German labor court judges presiding over several cases involving Zweibruecken, Bad Toelz, and Frankfurt employees have already indicated that they would rule in favor of the employee.

U.S. Military Attempts to Reduce Litigation With New Tariff Agreement

As discussed in chapter 1, to reduce the probability of litigation and higher settlement costs, the United States and other nations with forces stationed in Germany reached agreement with the German labor unions on an indemnity pay option that increases employees' basic severance entitlement. Although indemnity pay entitlements exceed severance pay entitlements, in many cases, it is lower than the actual settlements agreed to by the Army after employees initiated litigation.

Under the terms of the new tariff agreement, we calculated the average indemnity payment to be about $4,400 per employee. This payment is about 44 percent higher than the average severance pay entitlement of $3,000. If all local nationals were released today, the potential liability would be $207 million. Table 2.5 shows the current indemnity payment liability by service.

Table 2.5: Local National Indemnity Pay Entitlement by Service

		Indemnity pay	
	Number of employees	Total	Average per employee
Army	41,892	**$182,527,556**	$4,357
Air Force	5,388	**24,331,667**	4,515
Total	**47,280**	**$206,859,223**	**$4,375**

According to USAREUR and USAFE officials, the revision to the Collective Tariff Agreement will reduce employee termination costs. Without the agreement, the vast majority would go to court, with an average cost to the U.S. military of over $9,000, including litigation fees. With a new agreement, however, future closures might still result in increased litigation as job opportunities in Germany become fewer and harder to find. Further, employees who might not have litigated would still enjoy the increased benefits. However, the new agreement would offer some benefits to the United States that are difficult to quantify.

- Court judges may be less inclined to propose increased severance benefits if a negotiated indemnity plan exists.
- To the extent that the agreement reduces litigation, the U.S. military would not need to divert its limited resources toward preparing court documents and attending hearings.
- Increased benefits may improve productivity in a declining work force during a time when the U.S. military is relying on its civilian work force to manage the drawdown in an efficient and effective manner.

During negotiations on the Tariff Agreement, according to USAREUR personnel officials, the French, Belgium, and British military, which have smaller local national work forces, made a more generous offer to the unions without U.S. participation. The French subsequently made an even more generous offer that, according to our analysis, would have translated into an average U.S. liability of about $6,400 per employee.[4] The U.S. military was unwilling to increase its offer to that level.

The French offer and subsequent action illustrates that even a 145-percent increase in severance benefits does not discourage all local employees from litigating. Although the labor unions rejected the French offer, USAREUR personnel officials reported that the French military made the same offer outside the negotiated Tariff Agreement directly to 450 employees being terminated. Even with that offer, 29 still litigated and the rest accepted the settlement. These officials noted that a German official involved in union negotiations believed the labor courts will consider the settlement to be reasonable.

German Financial Assistance Being Sought

The U.S. Army and Air Force in Europe want the German government to bear additional costs associated with local national employment and have approached the German government. In early 1991, due to U.S. budget constraints, the Commander in Chief of the U.S. Army, Europe, asked the U.S. Embassy to approach the German government about bearing costs associated with local national employment. The costs would include, among other stationing costs, an increased share of termination costs. However, Embassy officials in Bonn told us that due to compelling diplomatic considerations, early 1991 was not a good time to approach the German government on this politically controversial issue. Specifically, at the time of the request, the U.S. government was seeking a substantial payment from the Germans to offset the costs of the Persian Gulf conflict. Additionally, the Embassy felt that it was better to encourage German labor unions to approach the German government directly by indicating that the commands would not have the financial resources necessary for funding increased benefits. Thus, the Embassy suggested that the German unions and government negotiate rather than the unions and U.S. forces.

[4]According to USAREUR personnel officials, the French offer was based on the following formula: employees ineligible for Social Security benefits would receive one-third of their month's pay for each year of service—up to 7 months salary—plus severance pay under the Tariff Agreement; employees eligible for Social Security benefits would receive 3 months pay offset by severance pay under the Tariff Agreement.

Conclusions

Recent terminations indicated that severance payments would likely exceed provisions of the Tariff Agreement because of litigation. Litigated settlements averaging $5,269 plus court costs far exceeded the average severance liability estimated at $3,000. U.S. forces are taking steps to limit U.S. liability by improving their management of termination actions and by entering into an indemnity plan with the labor unions to reduce litigation and related settlement costs. Although the German courts may consider the indemnity plan to be generally reasonable, some employees may choose to litigate and may win higher settlements.

According to Embassy officials, early 1991 may not have been a good time to approach the Germans regarding termination costs, but now that payments associated with Desert Storm are substantially concluded, we believe that the German government could be approached on this matter, as suggested by the Commander in Chief, U.S. Army, Europe. A further consideration is that congressional initiatives are urging the executive branch to reduce local national salaries and other remuneration by having host countries assume a greater share of these costs.

Recommendations

If local nationals continue to litigate and severance costs exceed employee entitlements under the Tariff Agreement and indemnity plan, we recommend that the Secretary of State request the German government to assist in financing the U.S. military drawdown by bearing the additional severance costs. We believe that during the planned bilateral burden-sharing initiative being undertaken by the United States (see agency comments below), it would be appropriate to introduce local national termination costs.

Agency Comments

The State Department commented that compelling circumstances have militated against the Department directing the U.S. Embassy, Bonn, to approach the German government about bearing a larger share of the costs associated with local national employment. Such a request is affected by a number of factors including (1) whether the German government will absorb costs in the drawdown of its own forces, (2) the outcome of the ongoing review of the Supplementary Agreement to the NATO Status of Forces Agreement, and (3) the results of the recent NATO-wide and planned bilateral burden-sharing initiatives being undertaken by the United States.

In follow-up discussions, a State Department representative stated that bilateral burden-sharing initiatives are expected to cover such items as a

portion of the employee's bonus and health costs. Accordingly, it would seem appropriate that these discussions include potential severance costs in excess of amounts agreed to in the Collective Tariff Agreement and new indemnity plan.

Delays Cause Some Local Employees to Be Paid After Their Jobs Have Been Eliminated

German law and the Collective Tariff Agreement provide German employees and works councils with rights that, when exercised, stretch out the time required to remove them from U.S. payrolls. According to the law, many employees must be notified at least 6 months before their separation. Parts of the termination process must be thoroughly coordinated with the works council before the 6-month termination process can begin. Announcements of base closures and terminations do not always consider the lengthy and complicated German termination and litigation process. Thus, the United States may have to pay millions of dollars in salaries to employees after their job sites are closed.

The Termination Process Is Lengthy and Complicated

Separating local national employees in Germany is a lengthy and complicated process. To comply with the provisions of German law, U.S. military personnel offices need between 9 months and 1 year to terminate an employee.

Coordinating With the Works Council Takes Time

Under the German law, a labor court may invalidate termination actions if the U.S. military does not allow a works council's involvement in proposed termination actions through what is referred to as the "cooperation process." Specifically, U.S. military employers are required to discuss termination actions in detail with a works council before issuing termination notices.[1] The works council has 10 days to review the action and then concur or disagree. If the military employer disagrees with the works council's views and decides to proceed with the terminations, the local works council may appeal to higher levels of authority.[2] Ultimately, the U.S. military has final decision-making authority.

Under the best of circumstances, the cooperation process without appeals can be completed within 1 month. However, at recently closed bases, the works councils invariably exercised their right to appeal management decisions. The cooperation process is further complicated when the U.S. military employer must cooperate with more than one local works council representing different groups of employees at the same installation. Works

[1]USAREUR interprets legal, tariff, and regulatory provisions to require that works councils be provided "sufficient and complete" documentation relating to terminations, including lists of employees affected; the methods used to select for termination, if applicable; employee notice periods; employee interest in and entitlement to placement with the U.S. military and civilian support agencies; and job vacancies with U.S. military employers in commuting area.

[2]USAREUR has three levels of works council (local, district, and head) corresponding to Army units, commands, and headquarters. USAFE has two levels, corresponding with air bases and headquarters.

council appeals generally extend the cooperation process by 2 additional months for a total processing time of 3 months.

Partial Closures Require More Preparation Time

When part of a base remains open (partial closure), the United States must, prior to cooperation with the works council, prepare a list of personnel who will be retained and terminated, using criteria established in German law. According to the Law on Protection From Termination of Employment, "social factors" must be considered when selecting employees for termination. USAREUR and USAFE have interpreted these as factors influencing an employee's financial needs and alternative means of financial support. To comply with this law, USAREUR and USAFE regulations require preparation of a "retention register," which shows employees grouped into competitive areas and levels (i.e., location, type, and grade of work) and ranked by retention credit factors, such as age and family size that indicate social standing. According to military personnel officials, the register takes a long time to prepare because (1) a questionnaire is often required to obtain the necessary data and (2) grouping and ranking individuals is a subjective process and must be done with care to withstand legal scrutiny. At one closing Army community, a personnel official said three people worked for 3 months to prepare a retention register for 289 employees.

Notice Period Can Range From 1 to 9 Months

The Collective Tariff Agreement entitles the employee to between 1 and 6 months advance notice of termination. The length of the notice period depends on the employee's age and years of service with the U.S. military. According to USAREUR and USAFE personnel officials, at least one-fourth of the work force is entitled to 6 months notice. In addition, terminations generally take effect only at the end of a calendar quarter, which can delay the effective date an additional 3 months (up to 9 months total) if notice is given at the beginning of a new quarter.

Delays and Late Announcements Result in Paying Salaries to Employees Without Jobs

The lengthy termination process can result in salaries being paid to employees who have no job site or work to perform. The United States can, and has, caused delays by (1) not promptly complying with legal requirements of the works council cooperation process or (2) failing to announce base closures or drawdowns at least 1 year in advance. So far, because of these problems, USAREUR and USAFE combined may pay up to $4.1 million in salaries to 405 employees for doing nothing. Although U.S. military officials are aware of the potential costs and are taking steps to

shorten or improve the cooperation process, late closure or troop withdrawal announcements may continue to delay the termination process.

Problems During Cooperation Process Delay Terminations

Errors made in preparing for, and working with, the works council can delay separation of workers. At Zweibruecken Air Base, failure to provide the works council with information in both German and English caused the process to restart and resulted in a later termination date than originally planned. The cooperation process on termination actions at Garmisch and two phases of terminations at Berchtesgaden required 5 to 7 months because Army officials could not promptly (1) initiate the process or (2) respond to works councils' appeals.

During partial closures at Berchtesgaden and Garmisch, Army personnel offices were unable to complete the termination process in time to avoid paying salaries after the closure date because responsible officials were not familiar with the process. As shown in table 3.1, the Army paid almost $800,000 in salaries to 49 local national employees after their jobs were eliminated.

Table 3.1: Salaries Paid After Partial Closure at Two Locations

	Number of employees on board after closure	Total months	Total unearned salaries
Berchtesgaden			
Phase I	5	28	**$55,279**
Phase II	43	352	**721,871**
Garmisch	1	3	**6,325**
Total	**49**	**383**	**$783,475**

The U.S military has achieved better results at subsequent closures. In the case of total closures in Neu Ulm and Bad Toelz, USAREUR completed the cooperation process in 3-1/2 months. However, to achieve this and thus avoid paying excess salaries, personnel officials worked overtime and made special efforts to coordinate events.

USAREUR officials said they have taken a number of measures to avoid any future delays in the termination process.

- Personnel offices have been consolidated to streamline the process.
- Training has been increased.
- Teams of personnel and other experts have been created to assist in various phases of the termination process.

At the same time, USAREUR officials believe certain aspects of the termination process, such as works council rights to appeal and required employee notice periods, cannot be shortened. Moreover, future drawdown actions will generally involve partial closures, which require more preparation time.

Late Drawdown Announcements May Increase Payroll Costs

The U.S. military has already identified and approved the majority of closures and many deactivations needed to reach its current goal of having only 150,000 troops in Europe by 1995. However, delayed public announcements of these and future base closure decisions or troop deactivations can still delay termination processes and result in unearned salary payments. According to the Termination Law, a labor court may invalidate a termination action where it occurs for reasons other than employee conduct or urgent business requirements. USAREUR personnel officials believe that local nationals may successfully contest their terminations in labor courts if separations are initiated before an official announcement of closure or deactivation occurs. Therefore, the U.S. military cannot begin the lengthy termination process until announcements are made.

Base Closures

To avoid salary payments to nonproductive workers, our analysis shows that 12 months is needed from initial works council notification (start of 3-month cooperation process) to actual employment termination (up to 9 months advance notice). Given the length of the termination process, military commanders need to expedite the announcements of base closures to minimize the number of cases when salaries are paid where no job exists. Delays in announcing base closures at Hahn Air Base and at Goeppingen and Schwaebisch Gmuend may result in U.S. forces paying up to $3.3 million to local national employees who are not working.

At Hahn Air Base, according to U.S. European Command planning officials, in September 1990, the Air Force advised the Command that it wanted to deactivate the 50th Tactical Fighter Wing by September 1991. In December 1990, the Command initiated the process of reviewing and approving the partial closure of Hahn Air Base. This process included consultations with the host government. Host nation consultation

complications caused a delay in a public announcement of Hahn Air Base actions until May 1991—only 4 months ahead of the scheduled drawdown date. Because the termination process requires 9 to 12 months to complete, in June 1991, USAFE anticipated paying unearned salaries to 260 local nationals at Hahn Air Base for the additional 6 months (September 1991 to March 1992) required. Based on an average monthly salary of $1,750[3] per employee, USAFE could pay out $2.7 million. According to USAFE officials, another reason for the delay was the late decision to partially close Hahn Air Base. Originally planned for fiscal year 1993, the closure was accelerated to reduce USAFE's overall budget. Thus, the additional local national salary costs incurred will be offset by a reduction in future base operating costs.

At Goeppingen and Schwaebisch Gmuend, we estimated the Army may pay up to $600,000 to 96 employees for 3 months beyond their termination date. According to military planning officials, in October 1990, USAREUR advised the European Command that it wanted to close facilities at Schwaebisch Gmuend as of September 1991—11 months before the desired closure date. The Command began the approval process in December 1990 and completed host nation consultations in February 1991. However, other closures submitted at the same time were not yet approved. U.S. officials delayed announcement of Schwaebisch Gmeund's closure until April 1991 when approval for other closures was finalized—only 5 months ahead of the scheduled closure date.

Regarding Goeppingen, in February 1991, USAREUR officials began studying the potential for closure, after the Army decided to deactivate two units for which the Goeppingen facilities were intended. In May 1991, USAREUR submitted its proposal to close Goeppingen to the European Command and in late July 1991 gave public notification about 8 months prior to the anticipated closure date.

Troop Withdrawals

USAREUR officials believe that the late announcements of troop withdrawals may also lead to termination delays but acknowledge that resulting costs would be difficult to isolate. According to USAREUR planning officials, local national employees are typically released when installations close rather than upon troop withdrawal. In some cases, depending on their function,

[3]Prior to September 1991, USAFE anticipated paying salaries of $4.2 million to 400 employees for 6 months. Using this data, we calculated an average monthly salary of $1,750. Fewer termination notices were issued because a number of employees had been placed, resigned, or retired.

the number of local nationals employed bears a direct relationship to the number of troops supported, but more often certain functions must continue to be performed during a drawdown as long as bases remain in full or partial operation.

A USAREUR planning official told us that USAREUR submitted the European Command a list of troop withdrawals, involving about 31,000 troops, for review in March 1991. However, public announcement of these withdrawals were delayed until July 1991 and beyond for two reasons.

- According to Command planning officials, the Secretary of Defense could not approve the withdrawals until waiving the requirement in the 1991 Defense Authorization Act to reduce DOD's local national budget and work force. The waiver was not signed until June 1991.
- According to a USAREUR planning official, the USAREUR commander will not announce the date of troop withdrawals until 6 months prior—the maximum amount of time soldiers are given to prepare for departure.

This official said the military is delaying public announcements to ensure that troops are focused on training and readiness. USAREUR officials understand that these delays may result in unearned salaries to some local national employees.

New Tariff Agreement May Reduce Additional Payroll Costs

According to DOD, the new tariff agreement may reduce the additional payroll costs occurring as a result of retroactive salary payments and reconstruction of the personnel actions related to the reduction in force. Although extremely difficult to quantify, they expect that many employees will now opt for mutual agreement terminations, under which employees agree not to go to court. These agreements may result in employees departing prior to the expiration of the lengthy reduction-in-force notice periods, which will reduce payroll costs.

Conclusions

Delays in coordinating with the works councils and announcing base closures will cause the United States to pay salaries to local national employees without productive employment. U.S. forces are seeking ways to shorten the works council cooperation process by improving their management of termination actions. However, the base closure approval and announcement periods are inherently lengthy and can result in excess salary payments if announcements of closure or withdrawal come late.

Even though USAREUR requires troop withdrawal in 6 months of the announced drawdown, our analysis shows the local national termination process generally requires up to 6 months longer. The Hahn Air Base and Goeppingen and Schwaebisch Gmeund examples illustrate that the Air Force and Army informed the Command at least 1 year in advance of their desire to close or draw down selected facilities. Therefore, it seems that the termination process can be completed within the year envisioned by the major commands, if closure announcements are made early. Further, if the U.S. military has already identified and approved the majority of the closures and deactivations needed to reach its current goal of 150,000 troops in Europe by 1995, it should have sufficient lead time to complete the termination process without incurring unnecessary salary costs. In some cases, however, base closure delays were not the result of the U.S. decision-making process but were caused by the German government's actions.

Recommendations

We recommend that the Secretaries of Defense, and the Army and Air Force endeavor to announce base closure dates in adequate time to terminate employees to avoid paying millions of dollars in unearned salaries.

When delays are caused by the German government, we recommend that the Secretary of State negotiate an agreement with Germany to ensure that associated costs are paid by Germany.

Agency Comments

DOD commented that it announces base closures as early as practicable to avoid additional financial liability, but it does not have complete control over the lengthy base closure decision-making process. The determination to close a base must be coordinated with all interested agencies in the U.S. government and the foreign government.

Accounting and Budgeting for Severance Pay in Germany Needs Improvement

Neither USAREUR nor USAFE budgeted and accounted for the cost of severing local national employees in Germany as it was being incurred. Until recently, the U.S. military recognized the severance liability and obligated funds when the payment was made rather than when the liability was incurred. In the past, this practice had limited impact because USAREUR and USAFE terminated very few employees and used current year appropriations to cover the cost. However, as discussed in chapter 2, as many as 27,200 positions will be eliminated through 1995 and more than $82.8 million may be required to fund near-term severance pay liabilities.

Services Not Recording Liability in Year It Occurs

Until 1990, USAREUR and USAFE did not recognize severance liabilities as they were incurred and used current year appropriations to cover severance payments. USAREUR knew its ultimate severance pay liability could be significant but took no action to determine the amount and obligate funds to cover it until December 1990. USAFE never considered it necessary to accrue a severance liability because of its relatively small number of local national employees in Germany. USAREUR and USAFE actions were contrary to DOD accounting principles, which require that funds be available to cover severance liabilities by (1) accruing the severance liability in the accounting system annually, (2) requesting funds in the budget and obtaining appropriations to cover the liability, and (3) obligating these appropriations annually against the accrued liability.

The Army Established Budgeting Policy, but USAREUR Was Slow to Comply

Although the Army established regulations requiring USAREUR to obligate funds as severance pay liabilities are accrued, USAREUR did not enforce the policy; therefore, its financial units did not comply with Army regulations. On May 7, 1991, USAREUR centralized accounting for severance pay to ensure that liabilities and obligations are recorded in the future on an accrual basis. Although USAREUR recently developed procedures for obligating severance pay funds, as of September 1991, USAREUR had not developed procedures for estimating and adjusting the severance pay liability.

USAREUR Commits Surplus Funds to Pay Severance

In November 1990, Congress mandated a change in the closing of appropriation accounts, which led to the Army recording its severance liability. Prior to the enactment of Public Law 101-510 in 1990, the obligated balances of expired DOD appropriations retained their fiscal year identity for 2 fiscal years. At the end of the 2 years, any remaining obligated balances were transferred into an "M" account, where they lost

their fiscal year identity but remained available to pay or adjust preexisting obligations.

Public Law 101-510 provided for the cancellation of all "M" account balances, including severance balances, after September 30, 1993, and the elimination of DOD's merged surplus authority (unobligated balances of expired appropriations) by December 5, 1990. The legislation also limited the period of time for making payments from, and adjustments to, an agency's obligations to 5 years after an appropriation's period of availability expires.

In December 1990, prior to cancellation of DOD's surplus authority, USAREUR obligated $158 million from fiscal year 1988 and prior fiscal years' funds to cover its severance liability for all local nationals in Germany. These funds were transferred to the "M" account. This amount was based on input from various accounting units that estimated their liabilities to be $3,200 or higher per employee.[1] Compared to the $126 million we calculated using employee records, it initially appeared that the Army overobligated funds for severance. However, the new indemnity agreement increases the Army's liability to $183 million, resulting in an underobligation or shortfall of about $25 million to cover its entire contingent liability.

USAFE Severance Pay Accounting Not Consistent With USAREUR

Although USAFE and USAREUR are subject to the same German labor laws and Collective Tariff Agreement establishing severance pay liabilities, USAFE neither recognizes the liability nor obligates funds until the severance payment is made. USAFE officials said they have not obligated on an accrual basis for local nationals employed by USAFE because the liability has been uncertain, and USAFE employs only a small number of local nationals. However, as discussed in chapters 1 and 2, the drawdown and the new indemnity agreement will increase the number of local nationals eligible for severance pay, and litigation may result in increased payments to some of these individuals.

[1]USAREUR advised financial units to use $3,200 as an average cost based on recent settlements at Rheinberg.

USAREUR And USAFE Need Consistent Policy Based on Accrual Principle

In 1974 and again in 1979, we reported that accounting principles require that accounting systems provide for identifying liabilities and recording obligations for separation allowances with applicable appropriations at the time they are incurred. Failure to record liabilities and obligate accordingly results in an understatement of the liability and inadequate administrative control over appropriated funds.

One approach to estimating severance liabilities is to use available computerized payroll records to determine the basic severance liability. The German Offices of Defense Cost, which are responsible for maintaining information on local national payroll, have computerized data bases of salaries and benefits, including severance pay under the Tariff Agreement, for all U.S. military local national employees in Germany. The Army and Air Force Audit Agencies periodically sample and test disbursed salaries and benefits, such as severance pay, against established criteria. We used this data to determine that the current severance liability is about $144 million (and current indemnity pay liability is $207 million) for 47,280 local nationals. Using the employee data base, the services can annually reconcile their severance accounts.

USAREUR And USAFE May Require Additional Funds for Severance Pay and Salaries

USAREUR and USAFE may have insufficient funding authority to cover their local national costs. USAFE will need funds because it neither accrued nor recorded obligations to cover its severance pay liabilities. USAFE relies on current year appropriations to pay its severance liability. Both USAFE and USAREUR may need funds to pay excess salaries when late announcements result in local nationals remaining on the payroll after closure. For example, in the case of Hahn Air Base, the Air Force budgeted payroll costs associated with the deactivation of the 50th Tactical Fighter Wing only through the scheduled deactivation date of September 30, 1991. As a result, USAFE's fiscal year 1992 budget was short the additional funds needed to pay local national salaries through the lengthy termination process. Problems such as those encountered at Hahn will occur if the budgets for local national payrolls are reduced before they can complete the termination process.

Separate Account Will Preserve Obligation Authority

Recognizing that funds obligated for severance prior to fiscal year 1989 would not be available to pay severance after fiscal year 1993, and to protect the integrity of the severance pay account, DOD proposed legislation to create a foreign national employees' separation account. This legislation was passed on December 5, 1991. Funds obligated for

severance pay in the "M" account will be transferred to this account and will be available until expended.

To ensure that funds obligated for severance equal the services' potential liability, the obligated funds must be periodically reconciled with the liability. According to DOD officials, guidelines are being drafted to implement the new foreign national employees' separation account. The draft includes a requirement to reconcile and adjust severance balances. The computerized employee data base available through the German Offices of Defense Cost can be used as the basis for recording the liability.

Recommendations

To ensure funds for severance pay are available for anticipated base and facility closures, we recommend the Secretary of Defense direct the Secretaries of the Army and Air Force to establish a consistent policy and procedures for severance pay accounting in Germany. These procedures would provide for the accounting of severance on an accrual basis using employee records to estimate the liability and provide for the annual reconciliation of the severance account.

Agency Comments

DOD concurred with our recommendation. The Army and Air Force will be instructed to comply with policy establishing a severance pay account on an accrual basis.

Severance Benefits Provided by German Industry

Local national employee entitlement and rights under the Collective Tariff Agreement generally fall short of prevailing practices in Germany's private industry.

Under the German Personnel Representation Law, works councils elected by employees of the U.S. military have "cooperation" rights. This means that the U.S. employer is obliged to discuss or "cooperate" termination actions with the councils. Nevertheless, the employer makes the final decision regarding termination actions. A severed employee's entitlement is provided for by the Collective Tariff Agreement, unless the employee brings suit against the U.S. military under the Termination Law and the labor court awards a higher severance payment.

In contrast, the German Labor-Management Relations Act gives "codetermination" rights to works councils elected by employees in private German industry. For termination actions, this means that the employer and works councils must come to an agreement on a benefits package for terminated employees, usually referred to as a "social plan." Social plans may include a severance payment, retraining benefits, outplacement assistance, and other benefits. If the employer and works council cannot agree on the social plan, a conciliation board composed of both employee and employer representatives may be formed. According to one private employer in Germany, the conciliation process can be lengthy and employers must pay salaries throughout the termination process. As a result, employers are inclined to agree with the works council demands.

One social plan recently negotiated by a private employer with the works council resulted in a severance package that included the following benefits: severance pay, child allowances, special allowance for older employees, and early retirement. According to the employer, the estimated cost of this plan was about $14,800 per person. As discussed in chapter 2, the average severance pay entitlement for local national employees of the U.S. military is currently about $4,400 under the indemnity pay, plus about $2,000 in unemployment benefits from the German government. The German government also funds pay continuation for eligible long-term employees for 2 or more years—a benefit not available to private sector employees.

Comments From the Department of Defense

THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D. C. 20301-2400

INTERNATIONAL
SECURITY AFFAIRS

28 FEB 1992

Mr. Frank C. Conahan
Assistant Comptroller General
National Security and International
Affairs Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Conahan:

This is the Department of Defense (DoD) response to the General Accounting Office draft report, "BASE CLOSURES: The Cost of Reducing the Local National Workforce in Germany," Dated December 19, 1991 (GAO Code 467371), OSD Case 8641-D.

The draft report provides a balanced appraisal of the issue of making severance payments to local national employees at U.S. military facilities in Germany. However, the situation in Germany has changed appreciably since the report was written. Negotiations on a new social plan covering the German national work force, including termination indemnity, subsequently have been completed, and the new plan is in place. The new social plan makes many portions of the report obsolete.

Detailed DoD comments on the report recommendations are provided in the enclosure. The DoD separately provided technical changes needed to make the report accurate under the current circumstances. The Department of Defense appreciates the opportunity to comment on this draft report.

Sincerely,

for James R. Lilley

Encl a/s

GAO DRAFT REPORT - DATED DECEMBER 19, 1991
(GAO CODE 467371) OSD CASE 8641-D

BASE CLOSURES: THE COST
OF REDUCING THE LOCAL WORK FORCE IN GERMANY

DEPARTMENT OF DEFENSE

* * * * *

RECOMMENDATIONS

Now on p. 25.

RECOMMENDATION 1: GAO recommended that the Secretary of State request the German government to assist in financing the U.S. military drawdown by paying an increased share of local national termination costs. (P. 31/GAO Draft Report).

DOD RESPONSE: Defer to Department of State.

Now on p. 33.

RECOMMENDATION 2: The GAO recommended that, to avoid paying millions of dollars in unearned salaries, the Secretaries of Defense, the Army, and the Air Force endeavor to announce base closure dates in adequate time to terminate employees without incurring added financial liability. (p. 41/GAO Draft Report).

DOD RESPONSE: **Partially concur.** DoD announces base returns as early as practicable so that, (1) notices of termination can be provided in a timely manner, and (2) added financial liability can be avoided. However, there are political constraints in achieving this goal. The determination to close a base is subject to a lengthy decision-making process. Such a decision then must be coordinated with all interested agencies in both the U.S. Government and the foreign government. The lengthy review and coordination process affects the timing of the announcement, and the DoD may not have complete control over the process when another agency raises complicating matters to be resolved.

Now on p. 33.

RECOMMENDATION 3: The GAO recommended that the Secretary of State negotiate an agreement with Germany to ensure that, when delays are requested by the German government, the associated costs are paid by Germany. (p. 41/GAO Draft Report).

DOD RESPONSE; Defer to Department of State.

RECOMMENDATION 4: To ensure the availability of funds for anticipated base and facility closures, GAO recommends the Secretary of Defense direct the Secretaries of the Army and Air Force to establish a consistent policy and procedures for severance pay accounting in Germany. These procedures would

Now on p. 37.

provide for the accounting of severance pay on an accrual basis using employee records to estimate the liability and provide for the annual reconciliation of the severance account. (p. 47/GAO Draft Report).

DOD RESPONSE: Concur. Such a policy is, however, already in place. Within the next 30-days,the Army and Air Force will be reminded to comply with the policy of establishing an account for severance pay on an accrual basis that reflects total severance obligations for that year.

Comments From the Department of State

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

United States Department of State

Washington, D.C. 20520

FEB - 3 1992

Dear Mr. Conahan:

Thank you for the opportunity to comment on your draft reports, "Base Closures: The Cost of Reducing the Local National Work Force in Germany," GAO Job 467371; and "Base Closures: Difficult Negotiations Ahead on the Residual Value of U.S. Investments in Germany," GAO Job 467359.

Please consider the suggested changes for GAO Job 467371:

The State Department recommends that the U.S. Military Commands in Germany (USEUCOM, USAREUR, and USAFE) be provided copies of the reports for review and comments.

In December, the relevant German unions agreed to the U.S. proposed severance package (the so-called "social plan"); the details can be provided by the U.S. Military Commands. We note that as a result of achieving agreement on this social plan, it is more likely that the German courts will endorse the terms of the agreement should a terminated employee choose to bring a suit against the U.S. forces about the separation settlement.

Now on p. 4.

On page 6, the executive summary states, "U.S. Embassy officials in Bonn have not approached the German Government about bearing a larger share of the costs associated with local national employment, as requested by the Commander in Chief of the U.S. Army, Europe." While the reasons for the "Embassy's failure" to approach the FRG are explained on page 30, the summary allows the interpretation that Embassy Bonn is less than enthusiastic about limiting U.S. expenditures for severance payments. We suggest that the sentence be modified

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to reflect that other compelling circumstances have militated against the Department's instructions to the Embassy to approach the German Government officials.

Suggested sentence: "Owing to other overriding considerations, the U.S. Embassy Bonn has not been directed to follow through on the request of the Commander in Chief of the U.S. Army, Europe, to approach the German Government about bearing a larger share of the costs associated with national employment."

Now on p. 6.

On page 8, similar considerations apply to the recommendation that "the Secretary of State request the German Government to assist in financing the U.S. military drawdown by paying an increased share of local national termination costs". The timing of such a request is affected by a number of factors: whether the German Federal Government will absorb various costs associated with the drawdown of its own forces in Germany; the outcome of the ongoing review of the FRG Supplementary Agreement to the NATO SOFA; the success of the most recent NATO-wide burden-sharing initiative being undertaken by the U.S. and the outcome of a bilateral burden-sharing initiative with the FRG that the USG is planning for the near future.

We suggest that the recommendation be that "the Secretary of State, when and as appropriate, request the German Government to assist in financing the U.S. military drawdown by paying an increased share of local national termination costs."

Now on p. 24.

On page 30, please amend the draft text to read as follows:

"In view of budget constraints, the Commander in Chief of the U.S. Army, Europe, asked the U.S. Embassy to consider the feasibility of approaching the German Government about bearing costs associated with local national employment which would include, among other stationing costs, an increased share of termination costs. However, Embassy officials in Bonn told us that due to compelling diplomatic considerations, early 1991

was not a good time to approach the German Government on this politically controversial issue. Specifically, at the time, the U.S. Government was seeking a substantial payment from the Germans to offset the costs of the Gulf conflict." The language on page 21 addressing the U.S. Army Commander should be revised to include the same reading as that suggested for page 30.

On page 31, the recommendation: Given the GAO's study of these questions, we believe it would be useful for the recommendation to state explicitly the basis on which the GAO believes the U.S. Government should request greater German assistance in financing the U.S. military drawdown.

Please consider the following suggested changes for GAO Job 467359:

Now on p. 25.

On page 12, although the 1991 National Defense Authorization Act specifies that cash proceeds will go to domestic military bases, we share EUCOM's preference for in-kind residual value settlements to benefit U.S. troops remaining in Europe, on the assumption that an in-kind settlement is likely to be more generous than a cash payment given current budget constraints in Germany connected with integration of the new Laender.

On page 19, given U.S. and German differences over residual value, ranging from the way each side calculates residual value to German demands that the U.S. be held liable for environmental damages the existence and extent of which are still largely unknown, we wonder whether it might be advisable to give more thought to USAREUR's 1975 suggestion for a "wash" solution, i.e. a mutual waiver of claims.

On page 25, while we agree with the report's recommendation that USAREUR should negotiate a written vice verbal agreement with the German Ministry of Finance to settle future residual value cases more quickly, we share USAREUR's view that such talks should be delayed until after completion of the currently ongoing review of the Supplementary Agreement.

Finally irrespective of all future residual value negotiations, we recommend that the U.S. position be that the terms of any settlement may not be more disadvantageous to the U.S. than those imposed on the former Soviet Union for the bases it is vacating in the eastern Laender. This would be of particular interest in the case of a "wash" solution (and assuming that the U.S. has concluded that a "wash" solution would ultimately be the best way to protect U.S. interest).

If you wish to discuss these comments, please contact Margaret Shields, GAO Liaison Officer, (703) 875-6866.

Sincerely,

Larry J. Eisenhart
Deputy Chief Financial Officer

The following are GAO's comments on the Department of State's letter dated February 3, 1992.

GAO Comments

1. We agree and have modified our report as suggested.

2. We have amended our report to include State's view that this timing of the request is affected by a number of factors. We are encouraged by the comment that the United States is approaching Germany on bilateral burden-sharing initiatives. If, among these initiatives, the United States plans to request that Germany share stationing costs or local national renumeration, then, in fact, this may be the right time to approach the German government on bearing the additional costs of terminating local nationals affected by the drawdown.

3. The recommendation has been modified to explain that the additional assistance sought is to cover severance costs that exceed the Collective Tariff Agreement and the indemnity plan. The indemnity plan, agreed to by the labor unions, provides greater benefits to terminated employees who choose not to litigate. If employees continue to litigate and sue for higher settlements, we believe the United States should request that the German government bear the excess costs.

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