EMPLOYMENT – UNIONIZATION OF FIELD TECHNICIANS AND TESTING PERSONNEL

Case No. 03-9

Facts:

Engineer A, a licensed professional engineer, is the CEO of Soilco, an engineering firm that provides civil and geotechnical engineering and testing services, both for projects Soilco designs and for projects designed by others. In performing services on behalf of Soilco's clients, Engineer A relies upon the information, data, and reports provided to him by Soilco field technicians and testing employees.

Certain engineering firms in the area of Soilco's practice have recently recognized a local union to represent engineering firm and related testing firm field technician and testing personnel. The union local active in the area is now seeking to organize Soilco's field technicians and testing personnel into the same union local that represents the construction workers whose work Soilco field representatives observe, test, and otherwise evaluate. The union local has a member disciplinary provision in its bylaws (the so-called "no-rat" provision) prohibiting any union members from making derogatory or disparaging remarks about any fellow union members or their performance.

Question:

Is it ethical for Engineer A to sign and seal reports that Engineer A receives from field technicians and testing employees who are members of a union with a member disciplinary provision in their bylaws prohibiting any union members from making derogatory or disparaging remarks about any fellow union members or their performance?

References:

Section I.1.	-	*NSPE Code of Ethics:*	*Engineers, in the fulfillment of their professional duties, shall hold paramount the safety, health and welfare of the public.*
Section I.4.	-	*NSPE Code of Ethics:*	*Engineers, in the fulfillment of their professional duties, shall act for each employer or client as faithful agents or trustees.*
Section II.1.b.	-	*NSPE Code of Ethics:*	*Engineers shall approve only those engineering documents that are in conformity with applicable standards.*
Section II.2.b.	-	*NSPE Code of Ethics:*	*Engineers shall not affix their signatures to any plans or documents dealing with subject matter in which they lack competence, nor to any plan or document not prepared under their direction and control.*

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Section III.7. - NSPE Code of Ethics: Engineers shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice, or employment of other engineers. Engineers who believe others are guilty of unethical or illegal practice shall present such information to the proper authority for action.

Discussion:

Unionization and collective bargaining have long been an issue within the engineering profession. Until recent times, the NSPE Code of Ethics contained a provision relating to the collective bargaining activities of engineers. However, in February 2001, the NSPE Board of Directors approved a recommendation by the NSPE Board of Ethical Review to remove the following language from the NSPE Code:

> "Engineers shall not actively participate in strikes, picket lines, or other collective coercive action."

The NSPE Board's rationale for this recommended modification was that the issue of an engineer's membership in a union should not be *a priori* prohibited, since in certain regions and sectors, engineers may find themselves required to participate in a union as a condition of employment. However, the Board of Ethical Review recognizes that the issues of union membership and collective bargaining are legitimate issues of professional interest and concern and therefore NSPE should continue to maintain and refine its policies concerning these important matters.

On the face of it, unionization puts the engineer's own self interest in conflict with two key service obligations of the professional—the duty to hold paramount the safety, health and welfare of the public and the duty to act for each employer or client as a faithful agent or trustee. While the NSPE Code does not require that engineers place themselves in positions of undue personal jeopardy, the Board has consistently and strongly held that engineers have a higher standard than self-interest alone.

Although the union activity described herein relates primarily to field technician and testing personnel, the question is asked from the perspective of Engineer A, and the emphasis on the obligations of the engineer to the client or employer and the protection of the public health and safety are points worthy of reinforcement in the present case. Engineer A's ultimate responsibility, as a professional engineer, is clearly to hold paramount the public health, safety, and welfare and a secondary issue is to guard and protect the interests of Engineer A's client or employer.

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As a general matter, engineers typically perform these obligations through careful and prudent design and through their rendering of engineering services in a professional and ethical manner. However, careful and prudent design (including plans, specifications, drawings and testing) will not be effective and cannot be relied upon if they are not followed during the testing and construction process. Those processes can only be deemed safe for the public where the engineer can reasonably rely upon the technical reports provided by those under the engineer's responsible charge and under circumstances where those under the engineer's responsible charge are fully committed to serving the interests of good, sound engineering practice. The subject bylaw provision has the potential to compromise confidence in the oversight the field technicians and testing personnel may exercise on the results of the work performed by a fellow union member. If the bylaw were worded similar to Section 3 of the NSPE Code, then this concern would be alleviated. That commitment is not possible where individuals performing the technical reporting function are subject to conflicted loyalties, duress, or intimidation.

In this connection, the Board is convinced the objective of sound engineering practice will be compromised by the presence of the union disciplinary provision in its bylaws prohibiting any union member from making derogatory or disparaging remarks about any other fellow union member or their performance. The Board is concerned that unionized engineering firm field technicians and testing personnel will consider themselves bound by this union rule or at the very least intimidated by the rule and, therefore, may not in all cases effectively provide reliable technical information necessary for Engineer A to perform his services for his clients and to protect the public health and safety.

For the reasons indicated, the Board is of the view that under the circumstances described, it would not be ethical for Engineer A to sign and seal reports that Engineer A receives from the unionized field technicians and testing employees who are members of a union with a so worded member disciplinary provision in their bylaws.

Conclusion:

It would not be ethical for Engineer A to sign and seal reports that Engineer A receives from the unionized field technicians and testing employees who are members of a union with a member disciplinary provision in their bylaws

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prohibiting any union members from making derogatory or disparaging remarks about any fellow union members or their performance.

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Each opinion is intended as guidance to individual practicing engineers, students and the public. In regard to the question of application of the NSPE Code to engineering organizations (e.g., corporations, partnerships, sole-proprietorships, government agencies, university engineering departments, etc.), the specific business form or type should not negate nor detract from the conformance of individuals to the NSPE Code. The NSPE Code deals with professional services—which must be performed by real persons. Real persons in turn establish and implement policies within business structures.

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