Report on a Case by the Board of Ethical Review

Case No. 74-3

Participation in Strike by Publicly Employed Engineers

Facts:
A state law permits state employees to organize and engage in collective bargaining for the purpose of seeking improvements in wages, hours, and working conditions. Under this authority the employees in the highway department sought and subsequently obtained an election for recognition as the collective bargaining agency. The professional engineers in the state highway department filed for a separate vote, but their petition was disallowed by the state employee relations board because the state law did not authorize separate units or separate votes for professional employees. Subsequently, a majority of all the state highway employees eligible for collective bargaining representation voted for such representation by a designated labor organization, including the professional employees. In the absence of a separate vote for the professional employees, it is not known how the engineers voted. In due course the labor organization completed negotiations with the management of the state highway department for a collective bargaining agreement, including a so-called "agency shop" clause, under which all employees represented by the labor organization must either become members of the labor organization, or upon refusal to become members must pay a "service fee" for the representation. The "service fee" is in the same amount as the union dues.

Prior to the expiration of the first collective bargaining agreement a second round of negotiations was started, with the union demanding a 60 percent pay increase plus other benefits. The employer (state highway department) offered a much lower benefit package. After further futile negotiations the union voted to go on strike.

The engineers represented by the union have asked whether they may ethically participate in the strike on either an active or passive basis and in particular regard to their subsequent employment status and relations with the union if they refuse or fail to participate in or support the strike.

Question:
May the engineers employed in the state highway department and represented by a union ethically participate in or support a strike of highway department employees?

References:
Code of Ethics-Section 1-"The Engineer will be guided in all his professional relations by the highest standards of integrity, and will act in professional matters for each client or employer as a faithful agent or trustee."

Section 1(f)-"He will not actively participate in strikes, picket lines, or other collective coercive action."

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Discussion:

We have heretofore had only one occasion to consider the import of Section 1 (f) of the code, and that case did not involve participation of engineers in a strike. Rather it dealt with the question of whether it was ethical for engineers to perform nonprofessional duties during a strike of nonprofessional production and maintenance employees, ft was there concluded that the engineers could ethically perform nonprofessional duties during the strike to the extent necessary to effect an orderly shutdown or maintenance of minimum operations in order to minimize permanent damage to plant facilities. (Case 70-4.)

Now we are confronted head-on with the most fundamental clash to be found in the Code-the duty to act as the faithful agent or trustee of the employer under Section 1 and whatever other motives may impel engineers to take such action as may be in their own interests. It is most unfortunate that the state law involved does not provide for a separate determination of the wishes of the professional employees with regard to collective bargaining. This right is provided under Federal law and in a number of state laws, both as to industrial and governmental employment. Had the engineers enjoyed the opportunity for a separate vote they may still have voted to be represented by the overall collective bargaining unit, but the case would have been clearer for application of the code's clear mandate against active participation in strikes.

In the situation before us, it may be surmised that most of the engineers may have voted not to be represented by the union but were easily outvoted by the much larger number of nonprofessional employees. Operating on this surmise, we recognize the serious implications of a concerted refusal of the engineers to join their fellow employees in a strike under the common collective bargaining representation. When the strike is over, regardless of its results, the engineers who refused in whole or in part to support the strike may be subject to union reprisal (whether legal or not) in the form of lack of proper working relationships with nonprofessional employees, an attitude of hostility by officers or adherents of the union, and, perhaps most importantly, a deliberate scheme by the union representative to "punish" the non-supporting engineers by deliberately negotiating less favorable economic or other benefits for them under the collective bargaining agreement or in subsequent administration of the collective bargaining agreement in such matters as interpretation of the agreement or grievance procedures.

Having recognized these practical difficulties, however, we find no option but to hold that the engineers have a higher standard than self-interest; they have the necessary ethical duty to act for their employer as a faithful agent or trustee. It is not without significance that the code speaks in Section 1 of the "employer" as well as the "client." What we have said does not require that the engineers place themselves in positions of undue personal jeopardy. It is to be noted that Section 1(f) addresses itself to "actively" participating in strikes or picket lines. That language does not thereby require the engineers to cross picket lines during the strike if by so doing they would run the risk of physical injury or be subject to other undue abuse. Nor, as we noted in Case 70-4, is the engineer required to

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perform the duties of the striking nonprofessional employees but may ethically do so if necessary to prevent permanent damage to various facilities. However, in the absence of a reasonable belief that continuing to perform their professional duties during the strike would jeopardize their safety or health, we must and do find that the paramount duty of the engineers is to continue their work under the injunction of Section 1.

It is not within our jurisdiction or expertise to enlarge upon the aspects of this case other than those concerned with engineering ethics, but we note that the situation before us explains in its hardest form the basis for the traditional opposition of the engineering profession generally to collective bargaining as a proper means for engineers to advance their economic and social interests. Those who may be interested in a more detailed discussion of the non-ethical but practical aspects of the question of collective bargaining for engineers are invited to secure and read NSPE Publication No. 1443, *In the Engineers' Interest . . . Collective Bargaining v. Collective Action.*

Conclusion:*
The engineers employed in the state highway department and represented by a union may not ethically participate in or support a strike of highway department employees.

***Note**-This opinion is based on data submitted to the Board of Ethical Review and does not necessarily represent all of the pertinent facts when applied to a specific case. This opinion is for educational purposes only and should not be construed as expressing any opinion on the ethics of specific individuals. This opinion may be reprinted without further permission, provided that this statement is included before or after the text of the case.

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