Report on a Case by the Board of Ethical Review

Case No. 76-13

Peer Evaluation of Faculty Members Under Collective Bargaining Agreement

Facts:
Engineering teachers employed at a state university are represented by a labor organization, along with all other teachers at the university (except department chairmen and certain administrators), and are all members of the labor organization under an agency shop provision in the collective bargaining agreement between the labor organization and the university.

One of the provisions in the collective bargaining agreement requires a peer review procedure under which each member of the faculty is to rate the performance of his or her peers, ranking them according to the rater's opinion of ability and performance.

Question:
Is it ethical for engineers engaged in educational activities to participate in a peer review and ranking procedure as described?

References:
Code of Ethics-Section 12-"The Engineer will not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice, or employment of another engineer, nor will he indiscriminately criticize another engineer's work. If he believes that another engineer is guilty of unethical or illegal practice, he shall present such information to the proper authority for action."

Section 12(b)-"An Engineer in governmental, industrial, or educational employ is entitled to review and evaluate the work of other engineers when so required by his employment duties."

Discussion:
In Case 69-10, we discussed in a different context the interpretation of §12 and §12(b), noting particularly that §12 does not prohibit all criticism of the work of another engineer. "It only applies to criticism or other action which will be injurious to another engineer when such criticism or other action is malicious or false."

We are not advised in the facts given us of the manner in which the peer review and ranking information will be used---whether it will be made known to other faculty members, the university administrators, or others. We assume that the peer review comments by the engineering faculty members of their colleagues may be either favorable or unfavorable, in whole or in part. To the extent that a member of the engineering faculty may receive substantial unfavorable comment from his or her colleagues, the result may well be an injury to professional reputation or prospects, or

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even future employment of the engineer subjected to the criticism. However, as the code is written, even such dire results are not totally barred if the adverse commentary is not generated by malicious or false motives or means.

The reference in §12(b) to "review and evaluate" was intended, we believe, to apply to specific technical work products (reports, research projects, articles, books, and so on) rather than to overall personnel performance over the course of a semester or year.

We are constrained to observe that when professional performance ratings are utilized in a collective bargaining atmosphere there is increased danger of abuse by those who may denigrate a colleague for ulterior motives in terms of personal advantage relative to assignments, promotions, differential salary increases, or otherwise. We believe that the proper intent of §12(b) by its reference to an engineer in education being permitted to review and evaluate the work of other engineers is to allow professionally motivated comment on technical performance in such areas as technical reports, experimental or research procedures and results, and other technical operations performed by others within the institution for the purpose of enhancing the educational and professional standing of the university.

The further question arising under §12(b) is whether the review and evaluation of the work of other engineers is "required by his employment duties." The terms of the collective bargaining agreement, while enforceable by law in proper circumstances, do not become part of the employment dues of the engineering educators. This reference indicates the right of an engineering educator in a position of authority, such as a dean, department head, or project leader, to review and evaluate the work of those for whom he or she has some general or project responsibility.

On the basis of this analysis of the two applicable sections of the code, we believe that §12(b) does not permit the peer review and ranking for economic purposes, which we assume to be the case here, under a collective bargaining procedure. Whether §12 generally permits peer review criticism turns on the issue of intent and purpose in offering such criticism. This aspect can be answered only in the context of the nature and purpose of the peer review procedures. The nature of collective bargaining, being an adversary system between employee and employer, leads us to at least a serious doubt that peer review under these circumstances would be consistent with the true purpose of the code relative to professional criticism of the work of other professionals.

Conclusion:*
It is not ethical for engineers engaged in educational activities to participate in a peer review and ranking procedure as described.

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Board of Ethical Review

Robert R. Evans, P.E.; James G. Johnstone, P.E.; Joseph N. Littlefield, P.E.; Donald C. Peters, P.E.; James F. Shivler, Jr., P.E.; L.W. Sprandel, P.E.; William J. Deevy, P.E., chairman

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