Report on a Case by the Board of Ethical Review

Case No. 81-3

Demand for Promotion Based on Transfer of Client

Facts:
Engineer A, a vice president of a broad-scope engineering firm which engaged in international engineering work through a wholly owned subsidiary firm, was placed in charge of the subsidiary company. His responsibilities included the development of new business. He spent several years in that capacity and while overseas developed personal contacts with foreign agencies and their representatives. Engineer A was moderately successful in these endeavors, and in due course reported that he had arranged a very large and desirable contract with attractive profit potential. In accordance with the practice in the foreign county, the subsidiary firm was entitled to a substantial advance against its fee, but the parent firm was required to post a form of security for the advance through the furnishing of a letter of credit payable to the foreign agency in the event the firm defaulted. That was arranged and an irrevocable letter of credit was issued, and work proceeded under the contract with the subsidiary firm.

Subsequently, Engineer A told the parent firm that he demanded that he be promoted to presidency of the parent firm, given a commensurate increase in salary and other benefits, and be awarded a percentage of the profits flowing from the ongoing contract. If the parent firm refused his demands, he said, he was in a position to, and would, have the contract taken away from the subsidiary firm and awarded to another firm which he would establish. The officers of the parent firm were convinced that, because of the personal relationship of Engineer A to the officials of the foreign agency, he could, in fact, have the contract terminated and awarded to another firm, in which case the parent firm would risk a severe financial loss through the process of termination of work in progress and its recovery of the letter of credit, as well as the profit potential from the assignment.

Question:
Was Engineer A ethical in making his demands under these circumstances?

References:
Code of Ethics- Section II.4-"Engineers shall act in professional matters for each employer or client as faithful agents or trustees."

Section III.1.-"Engineers shall be guided in all their professional relations by the highest standards of integrity."

Section III.1.f.-"Engineers shall avoid any act tending to promote their own interest at the expense of the dignity and integrity of the profession."

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Section III.4.a.-"Engineers in the employ of others shall not without consent of all interested parties enter promotional efforts or negotiations for work or make arrangements for other employment as a principal or to practice in connection with a specific project for which the Engineer has gained particular and specialized knowledge."

Section III.4.b.-"Engineers shall not, without the consent of all interested parties, participate in or represent an adversary interest in connection with a specific project or proceeding in which the Engineer has gained particular specialized knowledge on behalf of a former client or employer."

Section III.5.-"Engineers shall not be influenced in their professional duties by conflicting interests."

Section III.7.-"Engineers shall not compete unfairly with other engineers by attempting to obtain employment or advancement or professional engagements by taking advantage of a salaried position, by criticizing other engineers, or by other improper or questionable methods."

Discussion:
We have cited an extraordinary number of pertinent Code references in this case, perhaps because of the uniqueness of the facts, and to bring out a central point of the Code--the duty of the engineer to act within stated ethical bounds in relationships with employers, as well as with clients.

While we tend to think of engineers in private practice in relation to clients, there is an equally important relationship between the engineer and his or her employer. It is easy to overlook the fact that even in consulting practice engineers tend to be employees of their firms, even if they are sole owners or principals of high rank in the firm.

We need not, we believe, in this set of circumstances, detail the application of the many cited sections of the Code. Starting with the mandate that engineers shall act in professional matters for each employer as a "faithful agent", it seems beyond peradventure that any case can be made for the conduct of Engineer A toward his employer. Here was a blatant effort to use the professional employee-employer relationship as a means for personal advancement in direct conflict with the interests of the employer.

Engineer A may contend that what he did was a business affair, rather than one involving ethical obligations. We must reject that distinction because almost every unethical action as stipulated in the Code can be argued as one involving business interests. Perhaps the main lesson and point of this case is that the ethical and business activities of engineers cannot be simply or totally divorced; however labeled by the engineer, his or her conduct must be judged under the strictures of the Code.

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In addition to the primary duty of the engineer to be a faithful agent, as noted above, the Code demands integrity, which was flouted in this case. It likewise imposes a duty to subordinate private interest when that interest would conflict with the interest of the employer. There may be other sets of facts which would permit-or even require-an engineer to act contrary to the interests of an employer when there is an overriding public interest, but there can be no question in this case that Engineer A has offended the rule against unfair methods to seek advancement through taking advantage of his position in the firm: all leading to the clear conclusion that he acted by improper or questionable methods.

Conclusion:
Engineer A was unethical in making his demands under the stated circumstances.

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