BER Case 89-2

APPROVED BY BER
September 17, 1989

Section II.4. - Code of Ethics
Section II.5. - Code of Ethics
Section III.7. - Code of Ethics

DECLINING EMPLOYMENT AFTER ACCEPTANCE

FACTS:

The city of Orion began a recruitment process the first week of January for a city engineer/public works director. The recruitment was necessitated by the pending retirement of the former city engineer/public works director in May. The city wanted to have the new employee on board for orientation and training prior to the incumbent leaving. The city received a great number of applications and went through the laborious task of screening for finalists. During the screening period, Engineer A was in the area and requested an appointment to gather more information regarding the position. The appointment was granted and Engineer A was given information regarding the position, the city, housing, schools, etc. Engineer A expressed a strong interest in the position and stated he had friends living nearby. He also stated that he was familiar with the area. Engineer A was one of the four finalists interviewed for the position during the first week in March, and was selected as the best qualified applicant. An offer of employment was extended to Engineer A on March 10, which was accepted. Engineer A agreed to start employment on or before April 10.

During the period of March 15-April 10, several phone conversations were held with Engineer A during which he expressed some doubt as to his ability to start on April 10 due to obligations to his current employer and personal reasons. Engineer A was advised by the city that he would be permitted to return to his former home for meetings to satisfy his employment obligations. Engineer A was also advised by the city that if he was hesitant about employment due to personal reasons, the city could understand but that it would appreciate a decision so that it could begin a new recruitment process. Each time this was discussed, Engineer A stated that he wanted the position and would be there no later than April 10. On April 5th, Engineer A advised the city that he could not start on April 10th but that he could start on April 24th. Engineer A assured the city that this was a firm commitment. On April 23, Engineer A advised the city that he could not take the position.

QUESTION:

Was it ethical for Engineer A to deal with the city in the manner described?

REFERENCES:

Section II.4. -Engineers shall act in professional matters for each employer or client as faithful agents or trustees.

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Section II.5. -Engineers shall avoid deceptive acts in the solicitation of professional employment.

Section III.7. -Engineers shall not attempt to obtain employment or advancement or professional engagements by untruthfully criticizing other engineers, or by other improper or questionable methods.

DISCUSSION:

The decision to accept or change employment is frequently one of the most difficult choices with which an individual is confronted. A variety of factors must be weighed and compared in each case, including among them, areas of responsibility, opportunities for advancement, status of position, compensation level, family disruption and other similar considerations. Certainly when the issue involves a change in employment involving relocation, the difficulty of the decision is often compounded. However, in our ever-increasing geographic mobility as a society and the move toward regionalization and globalization of the world economy, we are constantly seeing individuals relocate in different parts of the country, or in different parts of the world. It is not at all unusual for an individual to make a decision to relocate several times during a professional career either within a company or with another company or firm.

Engineers and engineering firms have shared in this relatively new societal phenomenon where individuals experience in some cases several employment changes during their careers. Certainly, in some industries and professions including engineering, it could be argued that the practice has become the "norm" rather than the exception. In view of these changes, a logical question to ask is whether those changes should result in a reevaluation of the ethical obligations which employer and employee owe one another in their dealings.

While the Board has not squarely addressed an issue such as the one presently before it, the Board has had occasion to interpret relevant Code provisions in the employee-employer context. Case 86-6 involved an engineer who was seeking employment and implied on his resume that he was personally responsible for the design of products which were actually designed through the joint efforts of the members of the design team. In finding that the engineer's actions were unethical, we found the engineer in violation of Section II.5.a. because of the misrepresentations he made to the prospective employer. We noted that the contents of a resume can have an enormous impact upon the success of an employment applicant being considered for a position and that there is great pressure on the job applicant to stress those qualities and qualifications that will have the greatest impact and make the best impression upon those in a position of responsibility in the hiring process. We acknowledged that job seekers take great pains to stress those aspects of their educational and employment history which demonstrate their suitability for the particular employment position in question.

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On another occasion, the Board had the opportunity to interpret the various sections of the Code relating to the ethical obligation of the engineer to be truthful and honest in professional affairs and the obligation to be faithful to the employer and we have consistently taken the position that this is not an area for much compromise. In one instance we acknowledged, for example, that certain statements or representations made on a resume or expressions of interest in employment which highlight an employment candidate's positive characteristics and omit less desirable ones may not run afoul of the Code as in Case 71-11. But, as a general proposition, this Board has been quite consistent in its view that full honesty and complete disclosure are the preferred courses of action.

While the Code's mandate to act in professional matters for each employer as faithful agent and trustee relates to the employer-employee relationship, we do not feel constrained in applying this provision to the pre-employment relationship where the employer and the employee are negotiating the terms and conditions of employment. For only in a atmosphere of faith and trust can a proper foundation be laid for a successful relationship.

While the Code's language in Section II.4. is limited to the duties of the employee to the employer or client, we believe this provision should be read with others provision of the Code (e.g., Sections III.6., III.6.b., III.11.) which clearly place an obligation on the employer to deal fairly and honestly with the engineer/employee. Obviously, the employment relationship is intended to place obligations upon both the employee and the employer.

Under the facts and circumstances of the present case, it appears that Engineer A's actions were not justifiable under the letter or the spirit of the Code. While, as we acknowledged earlier, there may be limited circumstances where a prospective employee may be justified in providing less than full disclosure, we do not view this case as one of those circumstances. As the facts clearly indicate, Engineer A was given ample opportunity to make his final intentions known and failed to do so on a number of occasions. Further, Engineer A was dealt with in a very fair and straightforward manner. In no sense was Engineer A pressured into making a quick decision, nor was Engineer A "strung along" by an employer unsure whether it in fact wished to hire Engineer A. Finally, Engineer A was undoubtedly familiar with the nature of the hiring process and the need for the city to bring the appropriate individual "on board" prior to the retirement of the city engineer/public works director. Engineer A failed to appreciate his responsibility to a city that had offered him a crucial position during a crucial period. Whatever Engineer A's reasons may have been (e.g., indecision, a better employment offer, second thoughts, obligations to current employer, family disruption or other personal reasons), none of them could justify his failure to respond to the many opportunities provided by the city to "bow out" of the position.

CONCLUSION:

It was unethical for Engineer A to deal with the city in the manner described.

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