

## Report on a Case by the Board of Ethical Review

### Case No. 72-10

### Soliciting Clients of Former Employer - Hiring Employees of Former Employer

#### Facts:

Engineer A left the employ of Engineer B and opened his own local consulting practice. He immediately contacted several of Engineer B's clients (those for whom Engineer B had periodically done work but who were not under contract at that time) in an effort to have them become his clients. He also offered two engineer employees of Engineer B a raise to come to work for him. One of the employees accepted the offer. In the ensuing months Engineer A repeatedly approached the other employee and proposed a raise plus a cash bonus to induce the employee to make the change.

#### Questions:

1. Was it unethical for Engineer A to seek to obtain the "clients" of Engineer B?
2. Was it unethical for Engineer A to seek to obtain the employees of Engineer B by offering increased salaries or bonuses to make the change?

#### References:

Code of Ethics-Section 1(e)-"He will not attempt to attract an engineer from another employer by unfair methods." Section 9-"The engineer will uphold the principle of appropriate and adequate compensation for those engaged in engineering work." Section 9(d)-"When hiring other engineers, he shall offer a salary according to the engineer's qualifications and the recognized standards in the particular geographical area." Section 11(a)-"The engineer will not attempt to supplant another engineer in a particular employment after becoming aware that definite steps have been taken toward the other's employment."

#### Discussion:

We turn first to the question of one engineer supplanting another as proscribed by Section 11 (a) because we have previously dealt with the interpretation of that section of the code in some detail. In Case 62-10, under a similar provision to Section 11(a) of the present code, we held that an engineer does not have an exclusive right to perform engineering services for a particular client. "There can be no question but that the client has a right to change from one consulting engineer to another." And in Case 64-9, decided under the present wording of Section 11 (a), we dealt with the implications of "definite steps," meaning that "... the engineer has been informed by the client that he has been selected to negotiate an agreement for a specific project." These cases, reinforced by the decision in Case 65-8, stand for the proposition that an engineer or firm is ethically free to seek work from former clients of other firms, but may not try to displace a firm which has been retained or is in the process of being retained for a specific project. In this context an engineer or firm may not be said to have a client within the contemplation of Section 11

(a) because the engineer or firm has done work for that same client over a period of years. Each project or commission opens the ethical possibility of other engineers or firms seeking the work. (For other cases on one engineer supplanting another engineer, see 71-10 [nonpayment of fee], 72-3 [mailing of unsolicited letters to prospective clients ], and 72-4 [use of former employee to obtain work].) We turn, then, to the matter of a former employee now in practice on his own account attempting to hire employees of his former employer by offering higher salaries or bonuses. Analyzing this question, in part, in Case 68-4, we commented that in the absence of a definition of "unfair" in Section 1(e) the offer to employees of another firm must be judged in the context of the offer and that such methods as denigrating the present employer or the use of other statements that make unjustified or unfavorable comparisons between the current employer and the prospective employer would clearly seem to be "unfair." But in that case the facts did not involve the offer of a higher salary or the use of bonuses. Neither Section 9 nor Section 9(d) is particularly helpful in evaluating this aspect of the case because their thrust appears to be to protect the interests of engineer- employees from unduly low salaries, and there is no indication of what is meant by "appropriate and adequate compensation. . . ." Thus, we are confronted again with the problem of trying to define "unfair" without any particular guideline in the form of pertinent code provisions or NSPE policy. In this circumstance we turn to a general philosophical tenet of the engineering profession that salaries are properly a function of the law of supply and demand rather than being settled by collective bargaining or other pressure tactics. Under this "free market" concept, there does not appear to be any warrant to hold that the code is meant to deny employed engineers the right to change employment on the basis of improved salary or other economic conditions, nor does it forbid one employer the right to make more attractive economic offers to other engineers in competing firms. The higher salary offer may be a snare and delusion to attract employees away from a competing firm, and those employees so attracted may find that their increased economic status is short-lived, or their employment only temporary. But we believe that we must rely upon the good sense and judgment of the employees so invited to evaluate these factors as well as to act ethically themselves in this situation. In the absence of any facts to indicate the intent of Engineer A, we assume that his purpose was only to staff his own operation, but we recognize that his action might nevertheless harm the interests of Engineer B. The ethical control is whether he had a malicious intent; if so, his methods were "unfair" under Section 1(e).

**Conclusions\*:**

Q1. It was not unethical for Engineer A to seek to obtain the clients of Engineer B provided that such attempts did not involve projects for which Engineer B had been retained or was in the process of being retained.

Q2. It was not unethical for Engineer A to seek to obtain the services of employees of Engineer B by offering increased salaries or bonuses to make the change.

**\*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

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