

## **Employment—Recommending Termination of Employment**

### **Case No. 12-2**

#### **Facts:**

Engineer A works for R&D International, a large multinational company. Engineer A is the only PE in his division and leads a team of technical personnel, including unlicensed engineers on various projects. One of the team members, Engineer B, an unlicensed engineer, has a history of poor performance, including a number of safety related violations within the workplace. A series of human resources performance improvement counseling sessions were held with Engineer B in an effort to improve Engineer B's performance. When the personnel file memos indicate no improvement in Engineer B's performance, Engineer A contacts the company's HR department director and recommends that, since safety violations are involved, Engineer B should be immediately terminated. After considering the recommendation, the HR Director decided that it would not be appropriate to terminate Engineer B at this time.

#### **Question:**

What are Engineer A's obligations under the circumstances?

#### **References:**

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| Section II.1.    | - | NSPE Code of Ethics: | <i>Engineers shall hold paramount the safety, health, and welfare of the public.</i>  |
| Section II.1.a.  | - | NSPE Code of Ethics: | <i>If engineers' judgment is overruled under circumstances that endanger life or property, they shall notify their employer or client and such other authority as may be appropriate.</i>   |
| Section II.4.    | - | NSPE Code of Ethics: | <i>Engineers shall act for each employer or client as faithful agents or trustees.</i>  |
| Section III.1.b. | - | NSPE Code of Ethics: | <i>Engineers shall advise their clients or employers when they believe a project will not be successful.</i>  |
| Section III.7.   | - | NSPE Code of Ethics: | <i>Engineers shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice, or employment of other engineers. Engineers who believe others are guilty of unethical or illegal practice shall present such information to the proper authority for action.</i> |

#### **Discussion:**

Engineering employment issues often raise interesting and challenging ethical issues for the NSPE Board of Ethical Review. When combined with the question of safety in the workplace or elsewhere, these ethical issues can be particularly difficult.

Over the years, the Board has had an opportunity to explore several issues relating to both engineering employment and also safety issues involving the practice of engineering. For example, in BER Case No. 65-12 the Board dealt with a situation in which a group of engineers believed that a product was unsafe. The Board then determined that as long as the engineers held to that view, they were ethically justified in refusing to participate in the processing or production of the product in question. The Board recognized that such action by the engineers would likely lead to loss of employment.

In BER Case No. 82-5, where an engineer employed by a large defense industry firm documented and reported to his employer excessive costs and time delays by subcontractors, the Board ruled that the engineer did not have an ethical obligation to continue his efforts to secure a change in the policy after his employer rejected his reports, or to report his concerns to the proper authority, but has an ethical right to do so as a matter of personal conscience. The Board noted that the case did not involve a danger to the public health or safety, but related to a claim of unsatisfactory plans and the unjustified expenditure of public funds. The Board indicated that it could dismiss the case on the narrow ground that the NSPE Code does not apply to a claim not involving public health and safety, but that was too narrow a reading of the ethical duties of engineers engaged in such activities. The Board also stated that if an engineer feels strongly that an employer's course of conduct is improper when related to public concerns, and if the engineer feels compelled to blow the whistle to expose facts as he sees them, he may well have to pay the price of loss of employment. In this type of situation, the Board felt that the ethical duty of the engineer becomes a matter of personal conscience. However, the Board was unwilling to make a blanket statement that there is an ethical duty in these kinds of situations for the engineer to continue the campaign within the company, and make the issue one for public discussion.

In BER Case 88-6, an engineer was employed as the city engineer/director of public works with responsibility for disposal plants and beds and reported to a city administrator. After (1) observing that the discharge exceeds allowable limits and is in violation of standards which are required to be reported to the state water pollution control authorities, (2) discussing the problem privately with members of the city council, (3) being warned by the city administrator to only report the problem to him, (4) discussing the problem again informally with the city council, and (5) being relieved by the city administrator of responsibility for the disposal plants and beds and replaced by a technician, the engineer continued to work in the capacity as city engineer/director of public works. In ruling that the engineer failed to fulfill her ethical obligations by informing the city administrator and certain members of the city council of her concern, the Board found that the engineer was aware of a pattern of ongoing disregard for the law by her immediate supervisor as well as by members of the city council. After several attempts to modify the views of her superiors, the engineer knew or should have known that "proper authorities" were not the city officials, but more probably state officials. The Board could not find it credible that a city engineer/director of public works for a medium-sized town would not be aware of this basic obligation. Said the Board, the engineer's inaction permitted a serious violation of the law to continue and made the engineer an "accessory" to the actions of the city administrator and others.

In BER Case 92-4, Engineer A, an environmental engineer employed by the state environmental protection division, was ordered to draw up a construction permit for construction of a power plant at a manufacturing facility. He was told by a superior to move expeditiously on the permit and "avoid any hang-ups" with respect to technical issues. Engineer A believed the plans as drafted were inadequate to meet the regulation requirements and that outside scrubbers to reduce sulphur dioxide emissions were necessary; without them, the issuance of the permit would violate certain air pollution standards as mandated under the 1990 Clear Air Act. His superior believed the plans, which involved limestone mixed with coal in a fluidized boiler process would remove 90% of the sulphur dioxide, would meet the regulatory requirements. Engineer A contacted the state engineering registration board and was informed, based upon the limited information provided to the board, that suspension or revocation of his engineering license was a possibility if he prepared a permit that violated environmental regulations. Engineer A refused to issue the permit and submitted his findings to his superior. The department authorized the issuance of the permit. The case received widespread publicity in the news media and was investigated by state authorities. The Board determined that the situation did not involve a matter of personal conscience, but rather a matter which had a direct impact upon the public health and safety. Yet unlike the circumstances involved in BER Case 88-6 where the issues were hidden from public, here, the case involves facts which have received coverage in the media. In view of that fact, the Board did not believe it was incumbent upon Engineer A to bring this issue to the attention of the "proper authorities". According to the Board, such officials were already aware of the situation and had begun an investigation. However, the Board believed it would not have been ethical for Engineer A to withdraw from further work on the project because Engineer A had an obligation to stand by his position consistent with his obligation to protect the public health, safety, and welfare and refuse to issue the permit. The Board indicated that engineers have an essential role as technically qualified professionals to "stick to their guns" and represent the public interest under the circumstances where they believe the public health and safety is at stake.

Turning to the facts in the present case, it is the NSPE Board of Ethical Review's opinion that while it is important to be mindful of a variety of factors that must be weighed in connection with the decision to retain or terminate an employee in the workplace, when observable issues of safety are involved, it is essential for professional engineers to make their views known and heard. Clearly the decision to terminate any employee for cause is a complicated one and dependent upon a variety of factors and considerations. Under the present facts, following a series of employment evaluations revealing a number of related safety violations, Engineer A made a recommendation to the Human Resources Department which was not accepted. If Engineer A believes that the continued employment of Engineer B will endanger other employees of R&D International or other parties, Engineer A has an obligation to bring this matter to the attention of a higher level of company management. The NSPE Code of Ethics for Engineers compels the engineer to safeguard the health, safety, and welfare of the public. The Board also felt that, while



Engineer B is still in the employ of R&D International, Engineer A should do all in his power to eliminate the safety-related issues. While this is not a clear case where Engineer A's judgment is being overruled, Engineer A would not be fulfilling his ethical obligation to R&D International if Engineer A did not take all necessary and appropriate steps to communicate his concerns regarding the performance of Engineer B. Engineer A's actions do not in any way constitute an effort to injure maliciously or falsely, directly or indirectly, the professional reputation, prospects, or employment of Engineer B. Instead, Engineer A's reporting of malfeasance is an honest and candid measure to ensure Engineer A's adherence to the NSPE Code.

### **Conclusion:**

Since observable issues of safety are involved, Engineer A has an obligation to make his professional opinion and recommendation known to higher management. The Board also felt that, while Engineer B is still in the employ of R&D International, Engineer A should do all in his power to eliminate the safety-related issues.

### **Board of Ethical Review:**

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