

By way of background, this matter involves two complaints filed with the Commission. In both C10-16 and the second count of C11-16,¹ the Commission found probable cause that respondents Carvalho, Neron, and Nina violated *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(c) when they voted to hire Cuesta to the position of Assistant Superintendent, while Cuesta was a sitting councilman for the City of Elizabeth and they worked for the City.² Following consolidation of the matters at the Office of Administrative Law, the Administrative Law Judge (ALJ) concluded that respondents Carvalho, Neron, and Nina violated *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(c) and recommended a penalty of censure. In its July 26, 2017 decision, the Commission adopted the ALJ's factual determinations, but found that a violation of *N.J.S.A.* 18A:12-24(b) was not established. The Commission determined that respondents Carvalho, Neron, and Nina violated *N.J.S.A.* 18A:12-24(c) by voting to appoint Cuesta to the position of Assistant Superintendent, and found that a penalty of censure was appropriate.

In their appeal and exceptions, respondents argue that the conclusion that respondents violated *N.J.S.A.* 18A:12-24(c) is not supported by the record. Respondents maintain that the Commission rejected many harmful factual determinations of the ALJ. For example, the Commission rejected the ALJ's conclusion that respondents violated *N.J.S.A.* 18A:12-24(b) because there was "no evidence in the record" to support such a finding.

¹ In the first count of C11-16, the Commission found probable cause to credit the allegation that respondent Nina violated *N.J.S.A.* 18A:12-24(b) by voting to abolish the position of Assistant Board Secretary when his aunt was employed by the Board and indirectly reported to the Assistant Board Secretary. However, the Administrative Law Judge (ALJ) concluded that this did not constitute a violation of *N.J.S.A.* 18A:12-24(b) and the Commission adopted the ALJ's conclusion.

² The Commission also found probable cause that Jose Rodriguez violated *N.J.S.A.* 18A:12-24(b) when he voted to appoint Cuesta to the position of Assistant Superintendent while his brother worked for the City of Elizabeth. Although the ALJ concluded that Rodriguez violated *N.J.S.A.* 18A:12-24(b), the Commission ultimately rejected the ALJ's conclusion and found that Rodriguez did not violate any provisions of the School Ethics Act. Accordingly, Rodriguez is not a party to this appeal.

(SEC decision at 3). The Commission also found that respondents were already employed by the City – and Cuesta also declared that he would recuse himself from any matters involving respondents – so a vote for Cuesta would not result in the securing of initial employment for respondents. Finally, respondents point out that the ALJ discounted Cuesta’s qualifications for the position, while the Commission found that his qualifications “undermine any suggestion that the votes by [respondents] secured any unwarranted privilege, advantage or employment for Cuesta.” (SEC decision at 4). Respondents contend that it is arbitrary for the Commission to “simultaneously adopt and contradict the ALJ’s findings of fact – even more so for the [Commission] to sustain the ALJ’s finding of violation *after* eliminating the bases for same.” (Respondents’ Brief, dated September 7, 2017 at 9). Essentially, respondents maintain that it was illogical for the Commission to reject many of the ALJ’s factual determinations, but uphold the ALJ’s decision that respondents violated *N.J.S.A. 18A:12-24(c)*.

Further, respondents point out that, in rejecting the ALJ’s finding that respondents violated *N.J.S.A. 18A:12-24(b)*, the Commission noted that respondents did not secure new jobs or promotions following the vote for Cuesta, nor would they receive a privilege, advantage or employment in the future. Respondents maintain that this reasoning contradicts the Commission’s ultimate conclusion that respondents violated *N.J.S.A. 18A:12-24(c)*, because the Commission already found that there is no financial or employment benefit to respondents, and therefore leaves nothing that could impair their objectivity and independence of judgment.

With respect to the penalty, respondents argue that a penalty of censure is not warranted in this case because no wrongdoing occurred. Respondents attempt to distinguish the cases cited by the Commission, in which a penalty of censure was warranted for first time offenders of the School Ethics Act, by pointing out that contrary to this case – where the

Commission found that there is no evidence that the respondents used or attempted to use their positions to secure unwarranted privilege or advantage – the misconduct by and direct benefit to the board members in those cases was clear. Respondents maintain that a penalty of censure is arbitrary, capricious and unreasonable because even though the Commission rejected the ALJ’s conclusion that respondents violated *N.J.S.A.* 18A:12-24(b), the Commission still accepted the ALJ’s recommended penalty.

In its reply, the Commission argues that it properly held that respondents violated *N.J.S.A.* 18A:12-24(c) by voting to appoint Cuesta, and that a penalty of censure is appropriate. Specifically, the Commission contends that respondents violated *N.J.S.A.* 18A:12-24(c) in voting for Cuesta because it was equivalent to a vote for their employer, which creates the appearance of impropriety. The Commission maintains that it was not inconsistent for it to reject the ALJ’s conclusion that respondents violated *N.J.S.A.* 18A:12-24(b) while still making the legal determination that a violation of *N.J.S.A.* 18A:12-24(c) occurred. “It is not inconsistent or unreasonable to find that these board members did not actually gain or attempt to gain any advantage for themselves (or others) in voting on the appointment, while still recognizing that the vote created a justifiable impression of a conflict of interest due to Respondents’ employer-employee relationship with Cuesta.” (SEC’s Brief, dated October 3, 2017 at 6-7). The Commission emphasized that “[i]t is this perception, not whether these Respondents have in fact benefited from appointing Cuesta, that erodes the public trust in the Board and violates *N.J.S.A.* 18A:12-24(c).” *Ibid.*

The Commission also contends that a penalty of censure is consistent with penalties it has previously imposed for violations of *N.J.S.A.* 18A:12-24(c). Although respondents attempt to distinguish the cases cited in the Commission’s decision by arguing that

they did not engage in actual wrongdoing or receive a benefit from their vote for Cuesta, the Commission points out that this argument conflates *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(c). A violation of *N.J.S.A.* 18A:12-24(c) does not depend on respondents receiving a benefit. Additionally, the Commission argues that this matter is similar to *In re James Famularo, Asbury Park Board of Education, Monmouth County*, SEC Dkt. No. C23-96, decision dated February 24, 1998. In that case, the Commission found a violation of *N.J.S.A.* 18A:12-24(c) that warranted a penalty of censure after a board member voted for the appointment of a city councilman to a principal position when he had served as an unpaid treasurer for the councilman’s campaign. Accordingly, the Commission maintains that a penalty of censure is warranted in the instant case given the public perception of the respondents’ conduct; further, such penalty is consistent with those imposed in the past for violations of *N.J.S.A.* 18A:12-24(c).

Upon a comprehensive review of the record, the Commissioner finds that the decision of the Commission as to a determination of a violation of *N.J.S.A.* 18A:12-24(c) is supported by sufficient credible evidence, and that the respondents have not established that the Commission’s decision is arbitrary, capricious or contrary to law.³ *N.J.A.C.* 6A:4-4.1(a). Pursuant to *N.J.S.A.* 18A:12-24(c), a school official may not act in a matter in which he or she “has a direct or indirect financial involvement that might reasonably be expected to impair his [or her] objectivity or independence of judgment.” Given that respondents worked for the City of Elizabeth and Cuesta was a sitting City councilman, respondents had direct or indirect involvement that could reasonably be expected to impair their objectivity or independence of judgment because they were voting for their employer. As such, for the reasons expressed

³ The Commissioner is also in accord with the Commission’s determination that respondents did not violate *N.J.S.A.* 18A:12-24(b).

in the Commission's comprehensive decision, the respondents' conduct violated *N.J.S.A.* 18A:12-24(c).

The Commissioner does not find respondents' arguments as to whether a violation occurred to be persuasive, as they conflate *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(c). While *N.J.S.A.* 18A:12-24(b) prohibits a school official from using his or her position to "secure unwarranted privileges, advantages, or employment," *N.J.S.A.* 18A:12-24(c) provides that school officials may not have a "direct or indirect financial involvement that might reasonably be expected to impair his [or her] objectivity and independence of judgment." Accordingly, *N.J.S.A.* 18A:12-24(b) and *N.J.S.A.* 18A:12-24(c) prohibit separate and distinct actions by school officials. Respondents may not have received an unwarranted privilege or employment opportunity from their vote for Cuesta – as they were already employed by the City – but their vote for Cuesta nevertheless created the perception that they may not be objective. As such, the Commission did not act in an arbitrary, capricious, or unreasonable manner in finding that respondents were in violation of *N.J.S.A.* 18A:12-24(c) without violating *N.J.S.A.* 18A:12-24(b). Furthermore, contrary to respondents' argument, it was not illogical for the Commission to rely on the ALJ's findings of fact, while conducting its own legal analysis and ultimately agreeing with the ALJ that respondents violated *N.J.S.A.* 18A:12-24(c), but coming to a different conclusion as to whether a violation of *N.J.S.A.* 18A:12-24(b) occurred.

With respect to the appropriate penalty, the Commissioner finds that a penalty of reprimand is the appropriate penalty in this matter. In *Famularo, supra*, the Commission found a censure to be the appropriate penalty for a violation of *N.J.S.A.* 18A:12-24(c) after a board member voted for the appointment of the city councilman to a principal position, when said board member had served as the councilman's campaign treasurer. Although the ALJ had

initially recommended a penalty of reprimand, the Commission found that the respondent's conduct warranted a stronger sanction because "[t]he nature of the conflict, here political cronyism, is surely one that the Legislature drafted the School Ethics Act to eliminate." *Famularo, supra*, at 3. Here, respondents are employed with the City, and report to intermediary supervisors – who ultimately report to the Mayor. As such, the relationship between respondents and Cuesta was far less direct than Famularo's was with the city councilman in that case, as respondents here did not work on Cuesta's campaign, nor did he have a direct supervisory role over them. Although the conflict of interest respondents had in voting for Cuesta despite their employment with the City was enough to warrant a violation of *N.J.S.A. 18A:12-24(c)*, it does not rise to the same level of political cronyism that the Commission was concerned with in *Famularo*, which resulted in the increased sanction from reprimand to censure. Therefore, the Commissioner finds that a reprimand is the appropriate penalty for respondents in this matter.

Accordingly, IT IS ORDERED that respondents Maria Carvalho, Stanley Neron, and Daniel Nina are hereby reprimanded as school officials found to have violated the School Ethics Act.

IT IS SO ORDERED.⁴

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 1, 2018

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⁴ This decision may be appealed to the Superior Court, Appellate Division, pursuant to P.L. 2008, c. 36. (*N.J.S.A. 18A:6-9.1*)