



**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

MARIA-ESTER NUNEZ,

Charging Party,

v.

SOUTH ORANGE COUNTY COMMUNITY
COLLEGE DISTRICT,

Respondent.

Case No. LA-CE-6579-E

PERB Decision No. 2804

January 28, 2022

Appearances: Public Employees Legal by Ronald P. Ackerman and Oshea V. Orchid, Attorneys, for Maria-Ester Nunez; Erickson Law Firm by Rex Randall Erickson and Joshua Taylor, Attorneys, for South Orange County Community College District.

Before Banks, Chair; Shiners and Paulson, Members.

DECISION

SHINERS, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Maria-Ester Nunez from the dismissal of her unfair practice charge by PERB's Office of the General Counsel (OGC). The charge, as amended, alleged that the South Orange County Community College District violated the Educational Employment Relations Act (EERA) by (1) taking various adverse actions against her, including termination of employment, in retaliation for engaging in protected activities and thereby interfering with her statutory rights, (2) postponing the District Board of Trustees' scheduled vote on a proposed contractual equity clause so that Nunez would be on leave and unable to clarify and correct the District's misleading information, and (3) failing to give Nunez notice of the

Trustees' intent to discuss termination of her employment in closed session, as required by the Ralph M. Brown Act (Brown Act).¹ OGC dismissed the amended charge for failure to state a prima facie case. Nunez timely appealed portions of the dismissal.²

Based on our review of the entire case file, the warning and dismissal letters, and relevant legal authority in light of the parties' submissions, we reverse the dismissal of the allegation that the District terminated Nunez's employment in retaliation for her protected activity and remand this matter to OGC to issue a complaint on that allegation. We affirm, however, the dismissal of the allegation that Nunez's suspension interfered with protected rights by preventing her from communicating with union representatives.

SUMMARY OF FACTUAL ALLEGATIONS

Nunez began her employment with the District in 2002. She was elected Classified Senate President in March 2017. She also became the California School Employees Association (CSEA) Chapter Vice President in December 2018. Nunez was very active in her role on the negotiations team for CSEA. In July 2019, Nunez

¹ EERA is codified at Government Code section 3540 et seq. The Brown Act is codified at Government Code section 54950 et seq.

² Nunez did not appeal OGC's dismissal of the alleged Brown Act violation for lack of jurisdiction, nor the dismissal of the allegations that the District retaliated against Nunez by placing her on administrative leave, issuing her a Notice of Intent to Discipline, and placing her on an unpaid suspension, all of which OGC found to be untimely. Accordingly, those allegations are not before the Board on appeal. (*Napa Valley Community College District* (2018) PERB Decision No. 2563, p. 8, fn. 7.)

requested information from the District about a new salary schedule containing a lower hourly rate, and raised concerns about family care leave and other leaves.

Vice President of Student Services Dr. Linda Fontanilla supervised Nunez and Executive Assistant Angela Mahaney. Mahaney and Fontanilla had both scheduled vacation for the same week in late July or early August 2019. Nunez requested the same week off to attend the CSEA Annual Conference. Fontanilla contacted Acting Vice Chancellor of Human Resources Kim Widdes about Nunez's CSEA release time request. During that conversation Fontanilla mentioned to Widdes that Nunez was frequently absent from work. While talking with Fontanilla, Widdes reviewed Nunez's leave balances using the District's leave tracking system and observed that Nunez's leave balances were high for someone frequently absent. Widdes asked Fontanilla for copies of the past two years' text messages sent by Nunez reporting that she would be late or absent. With this information Widdes investigated Nunez's absences. Meanwhile, Fontanilla denied Nunez's request to attend the CSEA Annual Conference even though under the CSEA-District collective bargaining agreement, elected delegates are excused to attend.

In September 2019, Nunez raised issues about the hourly rate calculation with the District. Around this same time, CSEA Chapter President Scott Ferguson Greene told Nunez that Fontanilla had called the District to complain about the number of union meetings Nunez attended.

In November 2019, the District questioned the legitimacy of the Classified Senate and its role representing classified members. Nunez argued that the Classified Senate played an important role in disseminating crucial information to CSEA members and the issue was dropped.

In December 2019, Nunez discovered while calculating the terms of a proposed equity clause in the CSEA-District collective bargaining agreement that the District included its cost for employee taxes in the calculation, which she believed violated the agreement. Nunez raised her concerns with the District but Widdes refused to continue discussing the issue with Nunez.

On January 6, 2020,³ District Human Resources sent an e-mail to Nunez about a mandatory meeting on January 8 to discuss a performance issue. The next day, Fontanilla called Nunez into her office to ask her if she knew what the meeting was regarding. Nunez replied she did not know. Fontanilla said she was surprised Human Resources did not inform her and shared that the meeting involved unauthorized CSEA release time.

On January 8, Nunez attended the mandatory meeting with CSEA Chapter President Greene and her labor representative. Human Resources Investigator Karen Dubert, Widdes, and Fontanilla were present for the District. Nunez was served with a Notice of Intent to Discipline that contained 36 charges alleging that she stole time by not entering her absences into the District's timekeeping system. The Notice informed Nunez that the District proposed to terminate her employment based on this alleged misconduct. This was the first time Nunez was alerted to issues involving unrecorded absences. The District placed Nunez on administrative leave immediately after the meeting.

³ All further dates are in 2020 unless otherwise indicated.

On January 23, Nunez attended a *Skelly* hearing,⁴ at which she was accompanied by her local Chapter representative and a CSEA regional representative. On January 29, Nunez received the recommendation of the *Skelly* officer. Although the *Skelly* officer sustained the District's proposed termination, she did so based on only 11 of the charges, finding the other 25 charges were unfounded.

On February 4, Widdes issued Nunez a First Amended Notice of Discipline containing the 11 charges sustained by the *Skelly* officer. The Notice informed Nunez that she had been placed on unpaid suspension immediately after the January 23 *Skelly* hearing. At its February public meeting, the District Board of Trustees voted on the contractual equity clause Nunez had raised concerns about in December 2019.

On August 17 and 18, an evidentiary due process hearing was conducted regarding Nunez's termination. On September 24, the hearing officer found the District had cause to terminate Nunez's employment. The District terminated Nunez's employment on October 19.

PROCEDURAL SUMMARY

Nunez filed her initial unfair practice charge on August 17, 2020. The charge alleged that the District placed Nunez on administrative leave in retaliation for her

⁴ *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194 requires that permanent civil service employees be given notice of significant proposed disciplinary action, the reasons for the action, a copy of the charges and the materials upon which they are based, and an opportunity to respond to the charges either orally or in writing before discipline is imposed. (*Id.* at p. 215.) A "*Skelly* hearing" refers to the employee's opportunity to respond to the charges and essentially results in a determination of whether there are reasonable grounds to believe the charges against the employee are true and support the proposed action. (*Cleveland Bd. of Educ. v. Loudermill* (1985) 470 U.S. 532, 545-546.)

CSEA activity, including raising concerns about the proposed contractual equity clause, and that it had done so to prevent her from attending the February 2020 District Board of Trustees meeting where the Trustees were scheduled to vote on the clause.

On February 22, 2021, OGC issued Nunez a warning letter finding that the charge did not state a prima facie case because the allegations were untimely. The warning letter also said the charge failed to establish a prima facie case of retaliation based on the District's placement of Nunez on administrative leave because it did not allege the presence of at least one "nexus factor" showing Nunez was placed on leave because of her EERA-protected activity.⁵

On March 8, 2021, Nunez filed a first amended charge which added allegations that the District terminated her employment on October 19, 2020. The amended charge also alleged that the District never informed Nunez when the District Board of Trustees would be discussing her alleged misconduct, and never provided her with the opportunity to speak on her own behalf or the opportunity to request that such a meeting be public as allowed by the Brown Act.

On July 23, 2021, OGC issued Nunez a second warning letter finding that the allegation that the District terminated Nunez's employment on October 19, 2020, established an adverse action, but found the charge lacked the presence of at least one "nexus factor." The letter further found the amended charge did not state a prima

⁵ As discussed *post*, PERB has developed several nexus factors used for identifying the circumstances which may support an inference that an adverse action was taken with unlawful intent.

facie case because it did not contain information showing that the District's failure to provide notice of the District's Board of Trustees meeting, opportunity to speak, or request a public meeting were adverse actions.

On August 6, 2021, Nunez filed a second amended charge alleging (1) further details about her protected activities; (2) the grounds and causes for the District's termination of her employment; (3) the District's failure to provide her with progressive discipline; (4) Widdes' alleged lie about a new policy that pending or following a *Skelly* hearing, employees are automatically placed on unpaid administrative leave until an evidentiary hearing; (5) the postponement of the Board of Trustees' December 2019 scheduled vote on the proposed equity clause to February 2020 so that Nunez would be on leave and unable to clarify and correct the District's misleading information; and (6) a violation of the Brown Act by failing to give Nunez notice of the Trustees' intent to discuss her employment in closed session.

On September 7, 2021, OGC issued a dismissal letter finding the amended charge did not allege any nexus factors to support the retaliation allegation. The letter also found the allegation that the District postponed the Trustees' vote to deprive Nunez of the opportunity to clarify and correct misleading information was speculative and did not provide other facts that might demonstrate the employer's unlawful motive. The letter further noted that PERB does not have jurisdiction to enforce the open meeting requirements under the Brown Act.

Nunez filed a timely appeal on September 27, 2021. On October 18, 2021, the District filed a response to the appeal requesting the Board adopt the decision of OGC and dismiss the appeal.

DISCUSSION

We review OGC's dismissal of a charge de novo, applying the same legal standard OGC applied to the allegations in the charge. (*City & County of San Francisco* (2020) PERB Decision No. 2712-M, p. 2.) At this stage of litigation, "the charging party's burden is not to produce evidence, but merely to allege facts that, if proven true in a subsequent hearing, would state a prima facie violation." (*County of Santa Clara* (2013) PERB Decision No. 2321-M, p. 13, fn. 8.) We thus assume the charging party's factual allegations are true, and we view them in the light most favorable to the charging party. (*Cabrillo Community College District* (2015) PERB Decision No. 2453, p. 8 (*Cabrillo I*); *Cabrillo Community College District* (2019) PERB Decision No. 2622, p. 4 (*Cabrillo II*)). We do not rely on the respondent's responses if they explicitly or implicitly create a factual conflict with charging party's allegations, even if the respondent's contrary responses are stated more persuasively or appear as if they may be backed up by more supporting evidence, when compared to charging party's allegations. (*Cabrillo I, supra*, PERB Decision No. 2453, p. 8; *Salinas Valley Memorial Healthcare System* (2012) PERB Decision No. 2298-M, p. 13.) Thus, at this stage of the case we generally do not resolve conflicting allegations, make conclusive factual findings, or judge the merits of the dispute. (*Cabrillo II, supra*, PERB Decision No. 2622, pp. 4-5; *County of Santa Clara, supra*, PERB Decision No. 2321-M, p. 12.) Rather, if there are one or more contested facts (or mixed questions of law and fact) that could affect the outcome, or there are contested, colorable legal theories, a complaint should issue, with the disputed issue(s) to be resolved at a formal hearing. (*County of Santa Clara, supra*, PERB Decision No. 2321-M, p. 12; *Salinas Valley Memorial Healthcare System, supra*, PERB

Decision No. 2298-M, p. 13.) “[W]here a material factual dispute turns on the respondent’s state of mind,” we take into account that motive is generally within the respondent’s own knowledge and that there is little opportunity for pre-hearing discovery, and we accordingly impose on the charging party a relatively low burden to allege facts tending to show the requisite state of mind. (*Lake Elsinore Unified School District* (2018) PERB Decision No. 2548, p. 18.)

Nunez’s appeal raises two issues for consideration. First, Nunez argues that OGC erroneously dismissed the retaliation allegation because the amended charge alleged sufficient facts establishing a causal nexus between Nunez’s EERA-protected activities and her termination. Second, Nunez contends that the amended charge alleged sufficient facts showing that her placement on administrative leave on January 8, 2020, precluded her from communicating with CSEA about her equity clause concerns. For the following reasons, we find merit in Nunez’s first ground for appeal but not the second.

I. Retaliation

To establish a prima facie case of retaliation sufficient to support issuance of a complaint, a charging party must allege facts showing that: (1) one or more employees engaged in activity protected by a labor relations statute that PERB enforces; (2) the respondent had knowledge of such protected activity; (3) the respondent took adverse action against one or more of the employees; and (4) the respondent took the adverse action because of the protected activity, which PERB interprets to mean that the protected activity was a substantial or motivating cause of the adverse action. (*City & County of San Francisco, supra*, PERB Decision No. 2712-M, p. 15.)

Although only the fourth element is at issue on appeal, we briefly discuss the other elements of the prima facie case. As OGC correctly found, the amended charge sufficiently alleged that Nunez participated in EERA-protected activity. Specifically, at the time of her termination, Nunez was the CSEA Chapter Vice President and a member of CSEA's negotiating team. (*Santa Clara Valley Water District* (2013) PERB Decision No. 2349-M, pp. 27-29 [service as union officer is protected]; *City of South Pasadena* (2020) PERB Decision No. 2692-M, p. 11 [service on union negotiating team is protected].) Nunez also engaged in EERA-protected activity when she: (1) in July 2019, requested information from the District about a new salary schedule containing a lower hourly rate, and raised concerns about family care leave and other leaves (*Berkeley Unified School District* (2015) PERB Decision No. 2411, pp. 19-20); (2) requested contractual leave to attend the CSEA Annual Conference (*Omnitrans* (2008) PERB Decision No. 1996-M, p. 12); (3) in September 2019, raised issues about the hourly rate calculation with the District (*Berkeley Unified School District, supra*, PERB Decision No. 2411, pp. 19-20); and (4) in December 2019, raised concerns with the District over a proposed equity clause in the CSEA contract (*Ibid.*).⁶

⁶ It is unclear whether Nunez's conduct of requesting information and raising concerns in July and September 2019 was undertaken in her role as CSEA Chapter Vice President, Classified Senate President, both, or neither. Nonetheless, because wage rates and leave are within the scope of negotiations and thus matters of concern to employees, her communications with the District about those matters were protected, regardless of whether she was acting on behalf of CSEA, the Classified Senate, both, or neither. (*Walnut Valley Unified School District* (2016) PERB Decision No. 2495, pp. 19-20; see *Jurupa Unified School District* (2012) PERB Decision No. 2283, p. 16 [individually seeking to enforce provisions of a collectively bargained agreement is a logical continuation of group activity and therefore protected].)

Although the warning and dismissal letters do not address whether the District officials who played a role in Nunez's termination had knowledge of her protected activities, the amended charge alleged sufficient facts to demonstrate such knowledge. Nunez's supervisor, Fontanilla, knew that Nunez used CSEA release time and requested leave to attend the CSEA Annual Conference. Fontanilla also complained about Nunez's attendance at union meetings. Acting Vice Chancellor of Human Resources Widdes knew of Nunez's request for leave to attend the CSEA Annual Conference and of Nunez's concerns about the proposed contractual equity clause. It also may be inferred that in her role overseeing Human Resources, Widdes was aware of Nunez's July 2019 information request and concerns over leave, and her September 2019 concerns over the hourly rate calculation. Widdes issued the Notice of Intent to Discipline informing Nunez of the charges against her and the District's intent to terminate her employment. The amended charge thus sufficiently alleged that at least one person involved in Nunez's termination knew of her protected activities. (*Escondido Union Elementary School District* (2009) PERB Decision No. 2019, p. 19.)

OGC also correctly found that the District's termination of Nunez's employment constituted an adverse action. (*California Virtual Academies* (2018) PERB Decision No. 2584, p. 22.)

"To establish the final element of the prima facie case, the charging party must show that the employee's protected activity was a motivating factor in the employer's decision to impose the adverse action." (*Omnitrans* (2009) PERB Decision No. 2121-M, p. 9.) While PERB considers all relevant facts and circumstances in assessing an employer's motivation, we have identified the following "nexus factors" as being the most common means of establishing a discriminatory motive, intent, or

purpose: (1) timing of the employer's adverse action in relation to the employee's protected conduct; (2) disparate treatment; (3) departure from established procedures or standards; (4) an inadequate investigation; (5) a punishment that is disproportionate based on the relevant circumstances; (6) failure to offer a contemporaneous justification, or offering exaggerated, questionable, inconsistent, contradictory, vague, or ambiguous reasons; (7) employer animosity towards union activists; and (8) any other facts that might demonstrate the employer's unlawful motive. (See, e.g., *City of Santa Monica* (2020) PERB Decision No. 2635a-M, p. 42; *City of Sacramento* (2019) PERB Decision No. 2642-M, p. 21.) Because a determination of motive is highly contextual, these factors are not to be applied mechanically but rather used as guidelines for holistically determining whether the charging party could produce sufficient circumstantial evidence at hearing to establish the employer's discriminatory motive. (*County of Santa Clara* (2017) PERB Decision No. 2539-M, p. 8.)

“Although the timing of the employer's action in close temporal proximity to the employee's protected activity is an important factor, it does not, without more, demonstrate the necessary nexus between the employer's action and the protected activity.” (*Monterey Peninsula Unified School District* (2014) PERB Decision No. 2381, p. 29, internal citations omitted.) While OGC acknowledged that timing is a nexus factor, the warning and dismissal letters did not address it. Nonetheless, the allegations in the amended charge establish sufficient close timing to support an inference of unlawful motivation for Nunez's termination. At the time the District decided to terminate Nunez, she was serving as CSEA Chapter Vice President and a member of CSEA's bargaining team. The initial Notice of Intent to Discipline informing Nunez of the District's intent to terminate her employment was served on January 8,

2020, approximately one month after Nunez raised issues about the proposed equity clause with Widdes. Additionally, in the six months preceding the Notice, Nunez had requested information from the District about a new salary schedule containing a lower hourly rate, raised concerns about family care leave and other leaves and about the hourly rate calculation, and requested contractual CSEA release time to attend the CSEA Annual Conference. The close timing between Nunez's protected activities and the District's decision to terminate her employment thus supports an inference that the termination was motivated by the protected conduct. (See *California Virtual Academies, supra*, PERB Decision No. 2584, p. 23 [finding the employee's "protected activity throughout the five months leading up to her termination, including some immediately before [management] commenced [its] investigation [was] close timing support[ing] a strong inference of unlawful motive".])

Although implicitly finding the timing factor was satisfied, OGC found the amended charge failed to establish any other nexus factor. The only nexus factor explicitly addressed in the dismissal letter is departure from established procedures and standards when dealing with the employee. OGC found that neither the allegation that Nunez did not receive progressive discipline nor the allegation that Widdes lied about the policy allowing the District to place Nunez on unpaid administrative leave pending her due process hearing showed a departure from established procedures. Given the lack of allegations in the amended charge as to the District's existing disciplinary or administrative leave procedures, we agree that Nunez failed to allege a departure from established procedures. (*Lake Elsinore Unified School District (2019)* PERB Decision No. 2671, p. 7.)

But the allegation that Nunez did not receive progressive discipline before being terminated does implicate the disproportionate punishment nexus factor. In considering whether the punishment appears disproportionate to the alleged misconduct, PERB does not determine whether the employer had just cause to impose the particular punishment. (*Adelanto Elementary School District* (2019) PERB Decision No. 2630, pp. 10-11.) Rather, the inquiry is whether the employer's choice to impose the particular punishment instead of a lesser punishment indicates a retaliatory motive. Thus, in certain contexts, an employer's decision to terminate an employee rather than pursue progressive discipline may indicate the employer wished to rid itself of a known union supporter. (*Regents of the University of California* (2020) PERB Decision No. 2704-H, p. 28; *City of South Pasadena, supra*, PERB Decision No. 2692-M, adopting proposed decision at pp. 19-21; *California Virtual Academies, supra*, PERB Decision No. 2584, pp. 26-28; see *San Joaquin Delta Community College District* (1982) PERB Decision No. 261, pp. 8-9 [finding that "suspiciously severe" punishment of transferring campus police officer to grounds crew supported an inference that the transfer occurred because the officer was "a known union activist"].)

In such cases, the decision to terminate often is intertwined with an inadequate investigation of the employee's alleged misconduct. For instance, in *Regents of the University of California, supra*, PERB Decision No. 2704-H, the university fired two employees for timecard fraud but "failed to investigate the several critical predicate facts underlying its conclusion that [the employees] knowingly violated policy." (*Id.* at p. 27.) We noted that "an inadequate investigation can prevent an employer from learning the true facts [and] result in a disproportionate punishment, which is a further

indicator of unlawful motive.” (*Id.* at p. 28.) We concluded that “the University’s failure to pursue these facts indicate[d] disinterest in whether the alleged misconduct actually occurred and strongly signal[ed] unlawful motive.” (*Ibid.*) In *City of South Pasadena, supra*, PERB Decision No. 2692-M, the city fired a firefighter for participating in an obstacle course race while on disability leave and allegedly trying to hide that fact from fire department management. (*Id.* at pp. 4, 9.) We found the investigation inadequate because the city’s investigator failed to speak to the firefighter’s physician or review his medical records, and that this failure, along with other suspicious aspects of the investigation, showed the city acted with a retaliatory motive. (*Id.*, adopting proposed decision at pp. 17-18.) We also found disproportionate punishment because the termination was inconsistent with the progressive discipline practice that relied on informal counseling, rather than formal discipline, for similar misconduct. (*Id.* at p. 13.) In *California Virtual Academies, supra*, PERB Decision No. 2584, the employer fired an employee for falsifying records without interviewing the employee or her supervisors, thereby demonstrating the employer “was not interested in obtaining evidence that might conflict with its desired result.” (*Id.* at pp. 25-26.)

In light of the above cases, the allegations in the amended charge establish both the inadequate investigation and disproportionate punishment nexus factors. The District’s one-sided investigation of Nunez’s alleged time theft consisted of comparing Nunez’s texts saying she would be late or absent with her entries in the District’s timekeeping system. Based on this investigation, the District proposed to terminate Nunez for 36 alleged instances of time theft. The District never interviewed Nunez about any of these instances; she first became aware of the allegations when she was served with the Notice of Intent to Discipline. Based on Nunez’s presentation at her

Skelly hearing, the *Skelly* officer found 25 of the 36 alleged instances were unfounded. This suggests that if the District adequately investigated to learn the true facts, including interviewing Nunez, it would have discovered it had no basis for 25 of the charges. That it did not undertake this additional investigation supports an inference that the District “was not interested in obtaining evidence that might conflict with its desired result.” (*California Virtual Academies, supra*, PERB Decision No. 2584, p. 26.)

Furthermore, despite the *Skelly* officer dismissing two-thirds of the charges against Nunez, the District did not reduce the proposed discipline but instead proceeded to terminate Nunez based on the remaining 11 charges. Although we cannot say based upon the allegations in the amended charge that termination was a disproportionate punishment for the remaining 11 charges, the District’s persistence in terminating Nunez’s employment despite the weakness of a large portion of its charges suggests that termination was a predetermined outcome to rid the District of “a known union activist.” (*San Joaquin Delta Community College District, supra*, PERB Decision No. 261, pp. 8-9.)

Finally, the amended charge also alleged facts showing District animosity toward Nunez’s EERA-protected activities. Nunez’s supervisor, Fontanilla, denied her request for leave to attend the CSEA Annual Conference. (See *State of California (California Correctional Health Care Services)* (2019) PERB Decision No. 2637-S, p. 15 (*CCHCS*) [resistance to union-related leave requests shows animus toward union activity].) Several weeks later, Fontanilla complained to the District about the number of union meetings Nunez attended. (See *State of California (Correctional Health Care Services)* (2021) PERB Decision No. 2760-S, p. 24 (judicial appeal pending) [manager’s concern that employee’s union steward duties would interfere

with his performance of job duties showed animus toward union activity].) The day before the meeting at which the District served Nunez with the Notice of Intent to Discipline, Fontanilla told Nunez the meeting was about her unauthorized CSEA release time. These statements show that Fontanilla disapproved of Nunez's union activities, thus supporting an inference that her animus toward those activities played a role in Nunez's termination. (See *id.* at p. 32 [animus of two of the four members of an interview panel toward the third-ranked candidate's union steward duties "infected" the decision not to hire him after the first two candidates did not work out]; *CCHCS*, *supra*, PERB Decision No. 2637-S, pp. 15-16 [animus inferred when supervisor's "embittered response" during conversation with employee about her union duties was not in response to a personal attack and was "inextricably bound together" with subordinate's protected activity].)

Because the amended charge alleged facts establishing three recognized nexus factors, we reverse the dismissal of the allegation that the District terminated Nunez's employment because of her EERA-protected activity and remand this matter to OGC for issuance of a complaint on that allegation.⁷ In so doing, we do not prejudge which nexus factors Nunez may primarily rely on at the formal hearing, which rationales or arguments the District may make in countering Nunez's case or in affirmatively asserting that it would have taken exactly the same actions even absent protected activity, or which party will ultimately introduce a more persuasive set of

⁷ Although we find the charge allegations establish three particular nexus factors, Nunez "remains free to introduce all relevant and admissible evidence of nexus at the formal hearing." (*City & County of San Francisco*, *supra*, PERB Decision No. 2712-M, p. 27, fn. 8.)

overall evidence. Rather, at the present stage, we find only that there is a material dispute of fact regarding the District's motive for terminating Nunez's employment.

II. Interference

Nunez appeals OGC's determination that she was able to speak with CSEA representatives while on suspension based on the statement in the amended charge that "Nunez's report in opposition to the proposal was dismissed by the Chief Job Steward." The appeal argues that Nunez was prevented from returning to campus for CSEA meetings after she was escorted off campus on January 8, 2020. But, even if true, this argument fails for two reasons. First, a directive for an employee not to communicate with her union while on suspension would unlawfully interfere with the employee's EERA-protected rights. (*Los Angeles Unified School District (2014) PERB Decision No. 2404*, pp. 11-12.) But the amended charge does not allege, nor do the filings contain, the terms of Nunez's suspension, so there are no alleged facts showing such a prohibition. Second, even if Nunez could not attend CSEA meetings on campus, the amended charge does not allege facts showing the District prevented Nunez from communicating with CSEA representatives by other means, such as telephone, e-mail, or meeting off-campus. And to the extent Nunez claims her suspension precluded her from addressing the District Board of Trustees about the proposed equity clause at its February 2020 meeting, the amended charge alleges no facts showing that the terms of her suspension barred her from attending and participating in what presumably was a meeting open to the public. For these reasons, we affirm OGC's dismissal of the interference allegation based on Nunez's suspension.

ORDER

The dismissal of the amended unfair practice charge in Case No. LA-CE-6579-E is REVERSED IN PART. This matter is REMANDED to the Office of the General Counsel to issue a complaint alleging that the South Orange County Community College District terminated Maria-Ester Nunez's employment because she engaged in activities protected by the Educational Employment Relations Act. All other allegations in the amended unfair practice charge in Case No. LA-CE-6579-E are DISMISSED WITHOUT LEAVE TO AMEND.

Chair Banks and Member Paulson joined in this Decision.