



# **UNFAIR (LABOR) PRACTICE CHARGE: UNITED FACULTY V. NOCCCD**

Case Number: LA-CE-6708-E  
Decision: 11/9/23  
Decision Declared Final: 12/1/23  
Result: UF Victory  
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# INTRODUCTION & WITNESSES

United Faculty (UF) proved in court that North Orange County Community College District (NOCCCD or District) violated the Employer Employee Relations Act (EERA) by retaliating against UF's Lead Negotiator, Mohammad Abdel Haq

- Professor Abdel Haq has endured over **two years** of retaliation due to frivolous claims made by the District; he was also ordered by NOCCCD **not** to discuss the complaint with anyone

## NOCCCD Witnesses

- Julie Kossick – Associate Vice Chancellor of Human Resources
- Jose Ramon Núñez – Vice President of Instruction at FC & District Negotiations Team
- Arturo Ocampo – former District Director for Diversity and Compliance
- Irma Ramos – Vice Chancellor of Human Resources & Lead Negotiator for the District

## UF Witnesses

- Mohammad Abdel Haq – Professor, Sociology & UF Lead Negotiator
- Christie Diep – Professor, English & UF President
- Aline Gregorio – Professor, Geography & Former Senate Representative in the President's Advisory Council

# TIMELINE OF IMPORTANT EVENTS

- 09/25/2019: Abdel Haq appointed as UF's Lead Negotiator
- **05/06/2021 & 05/20/2021**: Fullerton College Faculty Senate Meeting
- Spring 2021: Viral Video Incident (resulting in threats & harassment to faculty of color)
- Fall 2021: Foreign Language Department grievance over return to in-person instruction
- **10/22/2021, 10/28/2021, & 10/29/2021**: pre-grievance meeting, Town Hall, & bargaining session (respectively)
- 11/17/2021: complaint by Núñez against Abdel Haq (bolded dates included in complaint)
- 04/05/2022: UF filed suit against NOCCCD with the Public Employment Relations Board (PERB)
- 06/28/2022: PERB Office of the General Counsel (OGC) issued complaint
- 07/18/2022: District filed its answer, denied violation of EERA, and asserted affirmative defenses
- 08/04/2022: informal settlement conference (matter unresolved)
- 10/11/2022: Administrative Law Judge (ALJ) conducted prehearing videoconference
- 10/24/2022: UF filed Motion to Amend to add additional allegation against the District
- 11/01/2022: ALJ prehearing videoconference, District requested additional time to prepare for the new allegation
- 11/02/2022: ALJ granted the District's request
- 11/22/2022: District filed its answer, denied violation of EERA, and asserted affirmative defenses
- 11/7/2022, 11/8/2022, 12/5/2022, 12/6/2022, & 01/17/2023: formal hearing
- 03/17/2023: post-hearing briefs filed, and matter submitted for decision
- **11/09/2023: PERB decision issued unequivocally in favor of Abdel Haq**
- **12/01/2023: PERB decision declared final (the District elected **NOT** to appeal)**

# 11/17/2021: NÚÑEZ'S FORMAL DISCRIMINATION COMPLAINT

## May 6, 2021 & May 20, 2021 Academic Senate Meetings

- Núñez alleged that Abdel Haq's public comments were discriminatory against him and other males in Administration (Abdel Haq's comment brought attention to the silence from the District regarding the Spring 2021 viral video incident in both meetings)
- The District's media consultant advised the District to ignore the event
- Abdel Haq: "I spoke about concerns relevant to faculty safety. I spoke about the disproportionate impact of the viral video on... faculty that are women and faculty of color. I spoke about the inaction of administration... trying to distance themselves from this issue, as opposed to making public statements that are meant to protect and support faculty..." (p. 10-11)

## October 22, 2021 Meeting over Scheduling in Foreign Languages Department

- Núñez alleged that Abdel Haq's comment in the meeting ("[T]he refusal [of Willoughby] to adjust [his] decision [to require certain foreign language department faculty to return for two in-person classes] might be rooted in toxic masculinity, rather than data and evidence." [p. 12]) demonstrates "pervasive" discrimination
- Abdel Haq testified the use of the term "toxic masculinity" is an "academic term... working in an academic institution, it seems very appropriate to use academic terms to describe what is happening." (p. 13)

# 11/17/2021: NÚÑEZ'S FORMAL DISCRIMINATION COMPLAINT

October 28, 2021 Town Hall Meeting

- Núñez alleged Abdel Haq “[a]ccused Interim President [Gil] Contreras, Interim Chancellor [Fred] Williams, and the Executive Administration team of Fullerton College... of making the Spring 2022 scheduling decisions based on our toxic masculinity...” and that Abdel Haq was “[a]gitated, loud, speaking fast, quickly.” (p. 14)
- Kossick alleged “He made a claim that the administrators were unconcerned with women of color and faculty of unrepresented groups and the decisions they made were based on their toxic masculinity and male egos...” and that Abdel Haq was “[a]ccusatory, aggressive, loud, and hostile.” (p. 14)
- In the video recording introduced into evidence, Abdel Haq criticized decisions made by management: “[d]isproportionally men” and that are enforced on a faculty population that is “majority women”, who are largely “[s]till sadly responsible for household work . . . and chores and childcare, and they are being told they need to be back on campus during a global pandemic.” (p. 14)
- From the ALJ’s: “While Abdel Haq used the phrase ‘male ego’ to describe management’s decision-making, the video recording does not confirm his use of the phrase ‘toxic masculinity.’ The video recording also does not confirm any reference to the Fullerton College Executive Administration team.” (p. 14-15)

# 11/17/2021: VPI NÚÑEZ FORMAL DISCRIMINATION COMPLAINT

October 29, 2021 Bargaining Session

- Núñez alleged that Abdel Haq “said that I made scheduling decisions because of my ‘male tendencies’ which, according to him, disregarded the needs of female faculty in general, and those who are mothers of small children in particular. I immediately objected to this comment. I stated that he did not have the right to talk about what he considered to be my sex, sexual orientation, or gender identification because they were protected categories against discrimination and harassment.” (p. 15-16)
- Abdel Haq testified that his comments were addressing “the culture at large, and him being part of that culture that makes decisions, that ignores data, that ignores the needs and the disproportionate impact on your unit members that are women.” He further testified that Dr. Núñez “got very angry, and he started yelling at me. And I was honestly taken aback by his reaction... he said, I am not going to stand by someone questioning my sexuality. And I was very confused by that, because I didn’t say anything about his sexuality... I was just referencing a culture of toxic masculinity.” (p. 17)
- Diep testified “that United Faculty had received safety concerns from female faculty at Fullerton College about male administrators at Fullerton College not collaborating in their decision making about the return to in-person instruction. **Kossick then acknowledged that administrators had received a similar complaint.**” (p. 18, emphasis mine)

# THE DISTRICT'S INVESTIGATION OF NÚÑEZ'S DISCRIMINATION COMPLAINT

Ocampo reviewed Núñez's letter, and elected to "farm out" the investigation

- Patricia Weaver of the law firm Currier and Hudson was hired by the District to investigate
  - "The only information provided by the District to Weaver was Núñez's letter." (p. 22)
  - During the investigation by Weaver, "District counsel sent a letter to United Faculty counsel acknowledging that the original confidentiality directive issued to Abdel Haq could have been construed more broadly than the District intended." (p. 23)
  - From the case: "When Ramos was confronted during cross-examination to explain why her name did not appear on the list of witnesses, Ramos at first testified that she was not interviewed. Shortly thereafter, she vacillated over whether she had, in fact, been interviewed, but stated that she could not remember because the District deals with 'so many complaints.' Later, Ramos was shown the investigative findings and statements regarding her that were allegedly made by Abdel Haq, namely, that Abdel Haq had accused Ramos of white fragility and/or sexism in the past. When asked if she did not tell the investigator about that, who did, she answered, that she 'would have' discussed the incident during bargaining on October 29, 2021, with the investigator. When pressed by the ALJ to only testify to what she remembered saying, not what she 'would have' said, Ramos admitted to telling the investigator that Abdel Haq had accused her of white fragility." (p. 25)



# THE DISTRICT'S INVESTIGATION OF NÚÑEZ'S DISCRIMINATION COMPLAINT

## Findings of the Investigation

- “Regarding the meeting of the Academic Senate on May 6, 2021, it was noted that “[n]o one recalls exactly what Abdel Haq said,’ **implying that video recording of that meeting was not reviewed by the investigator.**” (p. 26, emphasis mine)
- “... the ultimate conclusion was that Abdel Haq’s statements at issue did not rise to the level [of] unlawful discrimination because they were not shown to be pervasive toward Núñez... nor were they shown to be because of Núñez’s gender or perceived race.” (p. 26)
- Weaver (the District’s investigator) found that “Abdel Haq ‘created a negative work environment’ for Núñez and other employees,” (p. 26) by violating Administrative Procedure 3050
- “It is noted that the Findings and Determination does not address or analyze whether Abdel Haq was engaged in protected union activity during any or all of the incidents alleged in the discrimination complaint.” (p. 27; this suggests that the law firm the District hired did not understand the case whatsoever, since all of Abdel Haq’s statements are protected speech.)
- “When asked whether [Ramos] made any effort to determine whether Núñez’s complaint had been based on union animus, she said no. When asked why not, she answered, ‘Because it’s not.’ Ramos confirmed that if corrective action is taken against Abdel Haq, it will be her decision to do so. When asked why her decision on taking action had yet to be made, she said one of the reasons was summer break, and another was a concern about interfering with union activity.” (p. 27-28)



# THE INVESTIGATION'S CREDIBILITY, DETERMINED BY THE ALJ

- “In general, Núñez’s, Kossick’s, and Ramos’s accounts of Abdel Haq’s speech and behavior during the events at issue were not as credible as Abdel Haq’s own accounts, which were confirmed by Gregorio and/or Ramos (depending on attendance at the event), and which were further bolstered by review of the video recordings of the May 6, 2021 Academic Senate meeting and the October 28, 2021 Town Hall meeting.” (p. 29)
- “For example, Nunez stated that on May 6, 2021, Abdel Haq’s comments were discriminatory against him and other members of the executive team because Abdel Haq accused them of not speaking out to defend the female adjunct professor involved in the viral video because they are men. Núñez also testified that Abdel Haq was speaking loudly. None of this was confirmed by review of the recording. Abdel Haq was not speaking more loudly than other speakers... This shows that Núñez exaggerated this allegation.” (p. 29)
- “Kossick testified that Abdel Haq stated that administrators were ‘unconcerned’ about female faculty... she described Abdel Haq’s demeanor as ‘accusatory, aggressive, loud, and hostile.’ Review of the video recording again did not confirm these assertions.” (p. 29-30)
- “It is difficult to discern how these comments could be interpreted as repetitive and pervasive toward Núñez as he alleged. Abdel Haq also did not assert that administrators were unconcerned about female faculty, as asserted by Kossick, but complained that managers who are ‘disproportionally men’ were making decisions that were enforced on a faculty population that was ‘majority women,’... Kossick... is also at odds with the District’s Findings and Determination. Kossick’s description... was also exaggerated.” (p. 30)
- “Ramos provided inconsistent testimony about her being interviewed as a witness in the investigation. This, coupled with Ocampo’s testimony about her being frustrated by Abdel Haq by her interactions with him in negotiations may possibly demonstrate bias against Abdel Haq.” (p. 30-31; Ocampo was the District’s witness.)

# ISSUES OF THE PERB CASE

- “Did the District, acting through Núñez, retaliate against Abdel Haq because of his protected activity and interfere with protected rights by filing a discrimination complaint against Abdel Haq?”
- “Did the District retaliate against Abdel Haq because of his protected activity and interfere with protected rights by initiating and conducting a workplace investigation over the discrimination complaint?”
- “Did the District, acting through Ramos, retaliate against Abdel Haq for his protected activity and interfere with protected rights by concluding that Abdel Haq’s protected speech and activity violated the District’s code of ethics and by threatening to discipline Abdel Haq?”
- “Did the District interfere with protected rights by issuing Abdel Haq a written directive not to discuss the workplace investigation with other employees except his representative?” (p. 32)

# CONCLUSIONS OF LAW

- “Abdel Haq’s speech in this case was closely related to matters of legitimate concern to employees, including the topics of employee safety, equity, and the return to in-person work during the COVID-19 pandemic. Because Abdel Haq’s speech addressed ‘matters of legitimate concern to the employees as employees’ (Rancho Santiago, supra, PERB Decision No. 602, p. 12), its content generally falls under the protection of EERA section 3543, subdivision (a).” (p. 35)
- “Public employees’ right to engage in concerted activities therefore permits them some leeway for ‘impulsive’ and ‘intemperate’ behavior, including moments of ‘animal exuberance.’” (p. 35)
- Example of **protected speech** in a different case at Rancho Santiago: “In describing actions of management regarding what [a faculty member] perceived as attempts at stifling academic freedom and free speech, as well as contract violations, she compared management to ‘Nazis’; accused management in being involved in the attempted murder of a teacher; called male management ‘vindictive sadists’ and ‘male supremacists’; and accused management of having ‘student spies’ reporting on teachers’ conduct.” (p. 36)
- “To the extent that Abdel Haq’s comments over ‘toxic masculinity’ and ‘male ego’ were viewed or can be viewed subjectively as purely derogatory, rather than through the sociological lens intended by Abdel Haq, **even derogatory and uncomplimentary speech** that is not maliciously false **retains its protection**, as long as [Sic.] it is related to legitimate concerns of employees.” (p. 38, emphasis mine)

# CONCLUSIONS OF LAW

- “With respect to the Academic Senate meetings, Abdel Haq appropriately used the public comment portions to express his and the United Faculty’s concerns over the perceived silence of District administrators over the viral video incident and their inaction over safety threats to faculty by members of the public. **While Abdel Haq’s speech was uncomplimentary, especially to the Fullerton College president, it mirrored the sentiment expressed in a written statement entered into the minutes of the meeting by the faculty senate.**” (p. 39)
- “With respect to the pre-grievance meeting on October 22, 2021, regarding scheduling in the foreign languages department, there was no evidence that Abdel Haq was loud, disrespectful, or that he otherwise disrupted the meeting. **His comments also may have been in part motivated by the District allegedly failing to follow the parties’ contract regarding scheduling.**” (p. 40, emphasis mine)
- “Regarding the Town Hall meeting on October 28, 2021, Abdel Haq again appropriately utilized the public comment portion of the meeting to criticize administrators’ actions with respect to returning to in-person instruction. While his speech was uncomplimentary to Contreras and Williams, all administrators had the opportunity and did respond to Abdel Haq’s statements. Abdel Haq also apologized for interrupting their comments and they were able to continue responding. While Abdel Haq was speaking firmly and with conviction, he was not inappropriately loud or disruptive.” (p. 40)
- “Regarding the bargaining session on October 29, 2021, the bargaining table is necessarily a forum for robust debate and possibly tense interactions. As discussed above in the section addressing witness credibility, there is no credible evidence that Abdel Haq’s comments were delivered in a manner that was different from his manner in earlier events. Although Núñez was personally and subjectively offended, there is no objective evidence that Abdel Haq was targeting Núñez personally, but rather he was criticizing the culture of management as a whole.” (p. 40)

# CONCLUSIONS OF LAW

- “Charging party’s prima facie burden includes showing that the employer, specifically, the decision-maker taking adverse action against the employee, had knowledge of the protected activity. It is clear that both Ramos and Núñez were aware of Abdel Haq’s advocacy for United Faculty and his protected speech.” (p. 41-42)
- Did the District engage in adverse actions against Abdel Haq?
  - Filing the Discrimination Complaint: “The adverse nature of Núñez having pursued the discrimination complaint is not eliminated by the fact that the District did not find unlawful discrimination by Abdel Haq. The District concluded that Abdel Haq had violated District policies and created a hostile working environment. This would not have occurred but for Núñez’s pursuit of a formal complaint against Abdel Haq. Therefore, the adverse action element of the *Novato* test is satisfied as to the filing of the discrimination complaint.” (p. 43-44)
  - Initiating and Conducting the Investigation: “In this case, the investigation was formal and prolonged... and Abdel Haq faced serious allegations of discrimination under state and federal laws. Any reasonable employee in Abdel Haq’s position would consider this kind of investigation to be adverse. Therefore, the District’s initiation and conduct of the investigation satisfies the adverse action element of the *Novato* discrimination standard.” (p. 45)
  - Concluding that Abdel Haq’s Protected Speech violated the District’s Code of Ethics and threatening Corrective Action: “Here, despite the District’s vacillation about not having reached a firm decision over whether to take corrective action against Abdel Haq, a reasonable employee standing in Abdel Haq’s position would find the District’s action adverse... This is so because the District found through its investigation that Abdel Haq had acted unprofessionally and created a negative work environment, not just for Núñez, but for ‘other’ employees as well, and concluded that he violated the District’s Code of Ethics. When pressed, Ramos would not confirm that these findings would not be used against Abdel Haq in the future, even if no official record of the investigation is placed in his personnel file. A reasonable employee would fear that such findings by the employer are detrimental to his continued employment.” (p. 46)

# CONCLUSIONS OF LAW

- Unlawful Motivation/Nexus (employer's action substantially motivated by the employee's protected activities):
  - “Here, there is both direct and circumstantial evidence of nexus between Abdel Haq's protected activity and the adverse actions taken... Regarding the filing of the discrimination complaint, all of Abdel Haq's speech alleged to be discriminatory by Núñez was EERA-protected, and in each instance over which Núñez complained, Abdel Haq was acting in his capacity as a representative of United Faculty. Thus, this provides direct evidence of nexus.” (p. 47)
  - **“Several departures from the District's procedures are shown.** For example, Ramos testified that she reviewed the discrimination complaint for timeliness and concluded that the allegations were timely because they all occurred within a year of the filing. This does not align with AP 3410, Section 7.3.2, requiring complaints of discrimination in employment to be filed within 180 days.” (p. 48, emphasis mine)
  - **“Ocampo testified that Ramos... has the responsibility to determine whether there is a violation of District policies... This is also consistent with AP 3410... However, Ramos testified that the outside investigator, Weaver, was the person who made that determination, not her.** Ocampo testified that all relevant documents and video evidence, if available, should be reviewed as part of an investigation. **There is no indication that the outside investigator reviewed available video evidence,** indicating both **a departure from investigative procedure and a cursory investigation.**” (p. 49, emphasis mine)
  - **“Finally, the investigator did not seek to interview Diep or other members of the United Faculty's bargaining team who were present... Instead, the witnesses seemed to be people who individually had issues with Abdel Haq. This shows that the investigation tended to be cursory and one-sided.”** (p. 50, emphasis mine)
  - **“Ocampo testified in an unfiltered manner about Ramos having shared with him her frustration over having to deal with Abdel Haq in negotiations. This coupled with her testimony about being a witness in the investigation for which she was also the ultimate decisionmaker tends to show animus or bias towards Abdel Haq's advocacy.”** ( p. 51)



# THE DISTRICT'S DEFENSE

- Since United Faculty demonstrated a case of retaliation/discrimination against Abdel Haq by the District, “the burden shifts to the District to establish that it would have taken adverse action even if Abdel Haq had not engaged in protected activity.” (p. 51)
  - Filing the Discrimination Complaint: “Regarding the first adverse action, Núñez’s pursuit of the discrimination complaint... there was no other basis offered for taking this action other than Núñez’s expressed desire to restrict Abdel Haq’s speech that has been found entirely protected by EERA.” (p. 54)
  - Initiating and Conducting the Investigation and Threat of Discipline over Code of Ethics Violation: “... as the record shows, the District did not appear to even consider that Abdel Haq had engaged in protected activity during the course of its investigation, let alone immediately stop its investigation once it was determined that the speech was protected.” (p. 55)
  - “The District has not met its burden of proving an affirmative defense to these charges of retaliation. Accordingly, the District violated EERA when it took the adverse actions alleged in the PERB complaint. By this same conduct, the District also interfered with protected employee rights and deprived United Faculty of its right to represent its members and officials. (p. 56)



# INTERFERENCE BY AN OVERBROAD DIRECTIVE

Recall the District instructed Abdel Haq to refrain from discussing the investigation with colleagues and students

- After several months (also after the District hired Weaver as its investigator), the District retracted its original overbroad directive made to Abdel Haq
- Instead, the District issued a new directive that allowed him to speak to colleagues, but to refrain from “harassing witnesses or trying to influence statements made by witnesses to the investigator” (p. 58)
- Since this “conduct would tend to interfere with the exercise of protected rights,” (p. 59) issuing the directive interfered with Abdel Haq’s ability to defend himself against the baseless accusations and violated his EERA-protected rights
- “The District’s original directive here was similarly overbroad as the ones found to interfere with protected rights... because it directed Abdel Haq not to discuss the investigation with employees, which interfered with his ability to discuss working conditions and inhibited his ability to aid in his own defense to the discrimination complaint... Thus, a prima facie case of interference is established.” (p. 58)

# REMEDY

- “... the District will be ordered to post a notice incorporating the terms of the order below at its buildings, offices, and other facilities where notices to its employees are customarily posted. Such posting shall be maintained for a period of thirty (30) consecutive workdays.” (p. 60)
- “The Notice shall also be posted by electronic message, intranet, internet site, and other electronic means customarily used by the District to communicate with its employees.” (p. 60)
- “Here, it is appropriate to order the District to rescind and expunge from all files it maintains regarding Abdel Haq the Findings and Determination document, and to similarly rescind and expunge the original November 30, 2021 letter containing the confidentiality directive that interfered with Abdel Haq’s protected rights.” (p. 60)
- The District must also “inform United Faculty and Abdel Haq in writing that it deems the discrimination complaint filed by Núñez to have been formally withdrawn.” (p. 60)

# SUMMARY OF FACTS & FULL REPORT



1. Núñez charged Abdel Haq with gender discrimination for the use of academic terms (e.g., “male ego” and “toxic masculinity”) as discriminatory terms used against him for being male.
2. The District’s witnesses were found to have personal issues with Abdel Haq, which contributed to the District’s findings in their investigation.
3. The District never considered if Abdel Haq’s speech was protected speech.
4. The District’s investigator never reviewed video evidence, and instead used biased witnesses and Núñez’s complaint to make a decision.
5. The investigation did not yield any evidence of discrimination against Núñez, but Abdel Haq was still charged with creating a negative work environment.
6. Irma Ramos served as both a witness in and the ultimate decision maker of the investigation.
7. The PERB ruling found the District’s witnesses not credible, while UF’s witnesses were found to be credible based on law, documentation, facts, reason, and video evidence.
8. The ruling found that every aspect of Abdel Haq’s communications were protected speech, and that accusations against him were exaggerated and not supported by video evidence.
9. Even “intemperate, abusive, and inaccurate statements” (PERB Decision 304-S) are acceptable.
10. PERB’s remedy is that the District violated the law. Accountability is needed.