

PERColator-Profile-with-Eric-Nordlof

Wed, Nov 02, 2022 10:45AM 29:08

SUMMARY KEYWORDS

union, perc, bargaining, decision, seniority, labor relations, pse, school district, grievance, employer, eric, employees, days, strike, managers, question, case, district, arbitration, permissive

SPEAKERS

Eric Nordlof, Matt Greer

M Matt Greer 00:09

Today we welcome Eric Nordlof as our guest for the PERColator Profiles episodes, where we interview and get to know experienced labor relations professionals to glean their knowledge to make us all better at our jobs. Eric is an experienced labor relations professional, whose several decades long career includes serving as a union lawyer and labor consultant in the K 12 education realm. We'll ask Eric some preset questions and a surprise wildcard at the end. We think you'll find Eric has a lot of interesting and thought provoking tips and experiences to share. And we thank him for joining us. Enjoy the episode.

M Matt Greer 00:52

Hello, Hello, Hello. Welcome to the PERColator podcast. My name is Matt Greer, one of your co hosts. And today we have the next in our series of PERColator Profile episodes where we get to know an experienced labor relations professional. And today I'm honored to welcome Eric Nordlof to the podcast. Welcome, Eric. How are you doing today?

E Eric Nordlof 01:12

I'm as good as can be expected.

M Matt Greer 01:14

All right, great. Yeah, we were just talking, it's the middle of summer while recording this. And it's very warm in both of the places that we're at in the Tri Cities and Olympia. So, but enjoying the summer. So welcome, Eric. Very happy to have you with us today. And part of our profiles is that we get to know get to know you and ask you a few preset questions that you've had a little bit of a heads up on to prepare some thoughts on and hopefully give some food for thought or some lessons learned to our listeners to help them be better labor relations professionals too.

So I really appreciate you being here and offering up your your wisdom to our listeners. So I thought I'd start off, why don't you tell us a little about yourself and your labor relations career and what you're doing these days?

E

Eric Nordlof 01:56

All right, well, I spent 25 years plus or minus with the Public School Employees of Washington represented classified which are non -teacher employees in K 12 and in higher ed, mostly when PSE was unaffiliated. And hence, our union was a primary raid target for the Washington Education Association and, to a lesser extent other trade unions, such as operating engineers. Thus, a lot of my work was related to maintenance of membership in an organizing sense. This ended with PSE's affiliation with Service Employees International Union, and Change to Win, it's umbrella organization, about five years prior to my leaving. I had one of my jobs was to negotiate the terms of that affiliation. So in the old days, when I first got into the business, a lot of PSE's labor agreements didn't contain arbitration clauses for dispute resolution. The only way to challenge a management decision beyond the contractual grievance process was by a lawsuit in superior court. A lot of school districts preferred that process because the union usually dropped a grievance after it had been processed to the school board level. I had been a public defender for several years prior to my employment with PSE and I had a fair amount of trial experience and PSE hired me personally, entirely because of that trial experience. After I was hired, we made it a point to take every single unsuccessful grievance to court and ask for a jury trial. The amount that a school district would pay its outside lawyer for a single jury trial probably equaled my annual salary during those years. Within a couple of years, not surprisingly, most of the districts we dealt with had agreed to arbitration clauses in our labor agreements. That's the way it is these days. During my work with PSE, I worked as a staff attorney, then as general counsel when my boss got tired of being a lawyer and went to work for Boeing. And I managed the legal department and represented the corporation board of directors in its business affairs. Later, I was manager of all of the field services that we had, which was day to day member representation and manager of the organizing department. I am not ashamed to say that I led PSE's expansion into higher-ed classified representation after the Personnel System Reform Act was enacted in 2002, and provided for civil service, state employees to engage in collective bargaining. After I retired from PSE, mostly because I couldn't take the travel anymore. I worked as a contracted labor relations attorney for the Kiona-Benton School District for another seven years. I handle grievance arbitration, actual bargaining at the table with both the WEA and PSE and I represented the school board in its dealings with the administrators. My first PERC case was Battleground School District, and it was decision number 2449, Examiner was Katrina Boedecker. And she taught me what skimming was all about. The current PERC decisions are numbered, I believe, in 13,500's. So there's been a lot of water under the bridge since I broke into the business. These days, I'm mostly retired, but I did write a second edition of my labor relations textbook last year. And my daughter, who's also a lawyer tells me that on a podcast, you're supposed to advertise your writings. So if you hear this, then order a copy. Otherwise, my wife and I escaped the cold weather these days by wintering over in our snowbird home in Las Vegas. Oh, my mentors. Am I supposed to talk about them now?

M

Matt Greer 06:42

I appreciate that, yeah, thanks for your background. I'm particularly, I was really interested to hear about your pre-arbitration days. That's interesting to hear about, that most of people who

came into the field in the last couple decades probably don't even realize that that was the case. I think you had to go to court back in those days. So that's really interesting to hear that. But yeah, Eric, before you use it, though, what's what is the name of your book? I'm sure if people Googled your name, they could probably find it. But just to just to close the loop on that plug for your book, what's it called?

E Eric Nordlof 07:11

It's the Practitioner's Guide to Public Sector Labor Relations in Washington State. I actually tried to put a copy of it on Amazon Kindle, in addition to the printed copies, which I keep in my garage.

M Matt Greer 07:29

Well, that's good to hear. I think we have the first edition in the office here at PERC. So maybe I'll try to lobby PERC to get the second edition in our, to add to our collection here. All right, well, thanks. Yeah. So the next question is, you know, who was one of your mentors, early on in your career? And what is something that you learned from them that might be interesting for us to know these days?

E Eric Nordlof 07:50

Well, the, I'm not trying to pander to the Commission. But I'd have to say that I learned the business mostly from various PERC staff members, because I spent so much time working with them. Because at that time, PSE was unaffiliated. And we were at war constantly with the WEA. So I didn't have any real close colleagues on the labor side. The person that sticks out in my mind was Janet Gaunt. Janet was the chair from way back when. And she's someone that I really looked up to, I did learn one thing from her about the importance of seniority in a labor agreement. Janet had a famous, saying, I think it's been repeated many times that says, "If wages are the heart of a labor agreement, then seniority is its soul." She wrote that in one of her arbitration decisions at Wapato School District, I think. What I drew from that, is that seniority is a huge issue for union members and that managers should recognize that importance. If there's a seniority violation, then the union will always fight. Otherwise, the union members will be disappointed, and an unsatisfied customer is likely, eventually, to become a former customer. Management can achieve a lot at the bargaining table without spending a dime by making seniority concessions. As I'll say in a minute, these concessions can be balanced out by making managers do their jobs. Now, Janet also taught me the importance of eating lunch on a hearing day, in order to keep my blood sugar up. She said that low blood sugar made lawyers cranky in the afternoon.

M Matt Greer 09:51

I've seen that for myself, so I can relate.

E Eric Nordlof 09:54

ERIC NORDLOF 09:51

That was an important lesson. So that is my mentor story. I could name, actually I could name 10 former staff members that I looked up to, and that taught me something.

M

Matt Greer 10:09

I remember you joined us for the Northwest LERA Conference and did a little speech there. I remember you mentioned Bill Lang was another one of your people. So after you mentioned that I want to read a few of Bill Lang's decisions in our database and somebody who I'd never had a chance to meet as a PERC person, I got to learn a little bit about him from you, so I appreciate that. And Janet Gaunt is another name that I've heard before, but never had the pleasure of getting to know her either, so thanks for sharing that. Let's move on to the next question then. So what negotiation tip, have you learned that you'd like to share and pass on to others who are maybe in the earlier stages of their career, and you want to give them a give them a tip about about how, you know, what they can do to make their job better?

E

Eric Nordlof 10:49

All right, well, the first tip I have is, if you're going into bargaining or preparing a proposal, then figure out what's important to the other side and what it will cost you to give it to them. I think that's pretty basic. Like I said, seniority or job security is a big issue for unions. It's one of the ways the union can show its members that it's doing something for them. And that's because whether they're represented or not, at least in the education arena, which was where my experience is most, most school districts pay a pretty standard wage across the board. A little bit of difference. But seniority is something that the union member doesn't have, unless they're represented by a union. School District employees discharge and discipline is not really a big deal, because it's sufficient cause for discharge, is provided to educational employees by statute. So they wouldn't matter if it was in the contract or not. The statutory citation in case anybody's interested is RCW 28.A.400.300. Well, that's just not that big of a deal. Everybody, any disciplinary or discharge decision is going to be run through sufficient cause or just cause which is the same thing. It doesn't cost the employer anything, as I said, to make concessions on seniority and bargaining. And it can be a good set off for something that would be important. An example that I can think of would be, if you're a manager, you agree to strict seniority preference for open positions, promotions and layoffs, in return for a union agreement to extend the various grievance timelines in the contract. This will ensure the union doesn't have a procedural screw up to get someone's grievance thrown out, which is really bad vibes for the union members. And the union can tell the fact that it's got seniority, strict seniority across the board. A lot of labor agreements have a relative ability and performance bypass clause for those types of employment benefits. And lots of managers were would rather have someone other than the senior applicant in the position. This place is where upper management needs to make frontline managers do their jobs. The job of managers is to manage, supervisors need to be held accountable to make sure that their subordinates are performing up to the standards of their job descriptions. If they're not doing that, whose fault is it? It's supervisors fault. So it doesn't matter who you have in the position as long as they can do the work. The supervisors need to fairly and honestly evaluate their seniority on their yearly performance evaluation, rather than simply checking all the boxes satisfactory in order to avoid a squabble with employees. That's why supervisors get paid more. If they're doing their jobs,

then there's no need for a relative ability and performance bypass provision. And employer can give it up at the table and return in return for getting something beneficial. That's the end of that.

M

Matt Greer 14:31

All right. That's tips for the union side and the employer side, there were two, two avenues of experience.

E

Eric Nordlof 14:39

Now, another tip I have is that managers need to communicate to their employees that there's no such thing as anonymous complaints in our district. If a worker wants to complain about another worker, then management will indeed investigate but we'll provide the name of the complainant if the union requests it. Number one, it's the law. And number two, the union is certain to request the name of the complainants. Now if the supervisor is going to interview an employee during one of these investigations, they should make certain to have another employee present as a witness to the interview. They should invite the interviewee to have a union rep presence without fighting over it and trying to decide if it fits into Weingarten or not. And they should write down the questions that they're going to ask in advance. The management witness who should probably be a confidential secretary from the district office, should make notes of all of the answers in a legible format. This will avoid a lot of skirmishing later at a later time if discipline is forthcoming in there's some type of grievance or arbitration over the issue.

M

Matt Greer 15:58

All right, well you touched on a lot of stuff there ,a lot of advice was packed into that.

E

Eric Nordlof 16:03

All right, well, I got another bargaining tip.

M

Matt Greer 16:06

Okay. We're getting our money's worth.

E

Eric Nordlof 16:08

I'm getting all my, all my sour grapes on it out on the table. Ground rules in bargaining. Ground rules are permissive subjects of bargaining. And my advice is, don't waste your time on them. They don't accomplish anything substantive, and try to act professional in bargaining and provide your proposal in a legible format at a decent time and expect the same as the other side. You're bargaining during the work here, then the employer should offer a finite amount of

release time for bargaining during the workday to the union. It's a good tactic to prevent bargaining from dragging you on and on, and if you do approach impasse, then, first of all, union negotiators do everything they can to avoid impasse. Make various proposals here, using various changes here proposal, continue to bargain if it's at all possible, if your negotiations run out of, negotiators run out of release time. Tell management that your team is available after work and on the weekends. Your goal is to avoid giving management reason to implement their last best and final offer. Management's facing impasse are approaching impasse, need to exercise their patience and make the union do the work. Remember that this is my one of my tips, is that patience is the most important quality of a labor negotiator and a poker player.

M Matt Greer 17:47

And you're both of those, right?

E Eric Nordlof 17:49

I am both of those.

M Matt Greer 17:50

Yeah, that's where you go to Las Vegas in the wintertime. Is that right? Part of the reason?

E Eric Nordlof 17:54

I actually I play more poker in Kennewick than I do in Las Vegas, but that is because Kennewick has a lot less to do.

M Matt Greer 18:03

Okay. So patience is a virtue. It sounds like. Thanks for that. I really appreciate you sharing that wisdom from your experience. And it's great to hear from your from your background as both the Union and as a employer Rep. I think I was hearing some some perspectives from both of those viewpoints. I'm curious if you'd be willing to tell us a story, like we have that as the next question. Tell us a story about a really good bargaining experience and what you did to make it make it so great, or maybe a really bad experience and what you wish you had done differently in hindsight. And as we were talking in advance, you mentioned that you might have a different little take on that. But you might have a story you might want to share illustrate some point that you might want to make, so tell us the story, Eric.

E Eric Nordlof 18:43

All right. Well, before I do that, can I have one more point I'd like to make about strikes, avoid striking at all costs. I think the entire time I spent with PSE, we had two strikes. And the only one that, I mean, the one that was reasonably successful was where the teachers agreed to

honor our picket lines, not to cross now in a school district, classified employees are the people that are injured by a strike, because a lot of them work year round, their last days cannot be made up. Remember, teachers only work 180 days, plus or minus. So if the teachers union strikes, which they do from time to time, the strike won't hurt the rank and file members in their pocketbook, because this district will just run school, an extra few days to make up for the strike. And the teachers will definitely expect everyone to honor their picket line. Now, I haven't seen this done, but I have advised my former employer that a school district can counter strike by simply running school during the strike while you're administrators have teaching certificates. You can just put the kids into their school auditoriums or gyms, and have the administrators teach them social skills or study skills for long enough during the day to count for one of the one eighty, if that happens in the teachers will recognize that and they will quickly end their strike back to work. That may be a controversial approach, but people should hear it.

M

Matt Greer 20:28

It might be a good point to say that Eric is sharing his own opinions not necessarily that of PERC or of Matt Greer. But we're here to learn from you, Eric. All right. So tips on strikes or not striking, it sounds like this is a good time to move on to your story?

E

Eric Nordlof 20:46

All right. Well, I can I, as I said, most of my experiences are in contract administration. I think I have made a few advances for the labor community in those in that area. But at Central Washington University, after the classified employees were allowed to engage in collective bargaining, the Student Health Center was staffed administratively by four employees. One of these employees retired, and the university just divided up her work among the other three without consulting the union. I, I or my union filed a charge, and we allege refusal to bargain over the decision to reduce staffing. Emily Martin, who's I think she's still on the PERC staff. She said no to my charge regarding the decision to reduce staffing, because staffing is a permissive subject unless you get into safety issues with the firemen and police. But she did find that the University's choosing to bargain, the effects of the staffing decision was a violation after the union had requested it. And the commission, affirmed Emily on appeal. And this is an important point for unions, I think to remember, even though the employer takes unilateral action regarding a permissive subject, it is usually obligated to negotiate the effects of his decision with the union. If approached properly, then effects bargaining can accomplish just as much as decision bargaining, depending upon the subject, and I can tell you that the virtually all of the effects of bargaining I've been involved with has turned into decision bargaining when you're at the table. Now that an earlier, much earlier case it was a little more complicated than that, in the same vein was when Wenatchee School District was Decision 3240, if someone wants to look it up. In that case, the district experienced budget problems due to a levee failure, the district made the decision to switch from half day to full day kindergarten. This eliminated the midday bus runs and resulted in a significant wage loss for some bus drivers. Kind of the basic law with respect to school districts is that budget and programs, are permissive subjects, the union in this Wenatchee case, which was me, contended that the decision to change kindergarten hours amounted to effects bargaining resulting from the budget decision, and that the district was then obligated to bargain the effects with us over its decision to reduce its budget. The employer contended that both of the decisions, permissive subjects, and

unfortunately after my old friend, Jack Cowen, who was another commission staffer of past years, ruled in our favor. The Commission which with my other friend, Janet Gaunt reversed the decision and said, No, both program and budget are permissive, and you can't shoehorn x-bargaining into a decision bargaining on the program decision. So that was reversed. But in the meantime, we were able to convince the district at the table to grandfather the bus drivers who lost hours at their existing insurance levels, which was in those days the employees Insurance contribution was based on the number of hours they worked. There was kind of a success from being stubborn, but my name says the loser in that case.

M

Matt Greer 24:58

Yeah, it's interesting though, because you hear about the litigation story, but then the behind the scenes, what was happening at the table level, right? Where you're actually having those conversations and trying, still trying to solve those problems, even though the litigation was ongoing. And we had those decisions, which, anybody can go to our website, perc.wa.gov. and click the Decisions tab and put in those case numbers that Eric's mentioning. Or you can even type in Eric's name and probably find all the cases that he appeared in if you're really curious, so that's the resource that's available out there.

E

Eric Nordlof 25:31

I did that one time, and there turned out to be about 150.

M

Matt Greer 25:35

It's quite a few. Yeah, right. Great. Well, thanks for sharing those stories. So the last question I have for you is go back in time, get in your time machine and go back to yourself, you know, back at the beginning of your career, what's some advice that you would give yourself if you could, if you could do that? Some labor relations advice that you'd want to tell yourself back in those early days of your labor relations career?

E

Eric Nordlof 25:59

Well, I think I've kind of mentioned it is, is one thing, pay attention to the commission staff that you have to deal with, because they do it a lot more than you do, no matter what your job is, and try to learn from them. Now, another bargaining chip along that line that I have for employers, is in your arbitration clause in the contract, try to get the union to agree that if there's a grievance arbitration, it'll be PERC Staff Arbitration, as opposed to paying a private arbitrator, you're gonna save yourself or your employer about \$1,000 or more a day of the hearing and preparation time. So I know that that provides more work for my friends down at PERC, but that's in there. And I've been able to accomplish it a couple of times, and it works well.

M

Matt Greer 26:59

That is one of the services that we provide in a state agency. So we do serve as arbitrators

That is one of the services that we provide is a state agency. So we do serve as arbitrators every once in a while. Thanks for that plug, Eric, appreciate it. Okay. All right. Well, we're getting close to the end of our time. And we've learned a lot from Eric, but I have a couple of kind of wildcard questions here. So I actually have five questions, but I'm gonna ask you to give me a number between one and five. Eric and this will tell me which question to ask you. These are all kinds of fun, light hearted questions. So, so one to five, what number are you feeling today?

E

Eric Nordlof 27:28

How about three.

M

Matt Greer 27:29

Okay. All right. So how do you celebrate a big labor relations win? So, I don't know, maybe maybe you won a ULP case? Or you got, you finally convinced the employer or the union when you were an employer rep too, that your idea was a good idea and whatever, whatever your big, you know, accomplishment was in the labor relations world, what do you do to celebrate that?

E

Eric Nordlof 27:52

Well, quite honestly, when I won, something that I thought was good I, I might share with other people in the business, but I didn't want to share it with the parties. Because you never want to rub it in. If you're the winner, is you have to go back and deal with those people at the table or in grievance hearings again and again. Try to maintain a professional and friendly relationship with your adversaries.

M

Matt Greer 28:25

Yeah, that's great advice. You want to celebrate some way acknowledge that but do get away with the shows humility, as well as important, right? Anything else you would do? You wouldn't go to the casino and play an extra round of poker or something? I don't know, something like that?

E

Eric Nordlof 28:41

Hahaha, No, I'm not sure, I might tell my daughter who's a lawyer. She would appreciate it.

M

Matt Greer 28:47

There we go. That's that's even better sharing it with a kid. All right, Eric. Well, that's the end of our question. I really appreciate you taking the time to chat with us.



Eric Nordlof 28:54

All right. Thank you.