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## RANDOLPH HEASTER LABOR SCENE

### Labor Board ruling says workers must call employers first before striking

By *RANDOLPH HEASTER*

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If workers participate in a union-organized one-day walkout, do they still have to call their employer if missing a shift?

Yes, according to a recent local case that went to the **National Labor Relations Board's** three-member board in Washington, D.C.

In summer 2006, **Service Employees International Union Local 2000** was in the midst of contract talks with **Swope Ridge Geriatric Center**. The facility had about 40 union employees, most of whom are certified nursing assistants who care for the elderly.

Talks continued even though the previous contract had expired. During that time, the union staged two one-day walkouts on separate weekends, lasting from Saturday afternoon to the following Sunday afternoon, which included workers walking a picket line in front of the facility.

In both instances, the union gave Swope Ridge a 10-day notice. Swope Ridge was prepared for the job actions, resulting in no disruption of patient care, according to the NLRB's decision.

However, Swope Ridge issued written disciplinary warnings for some of the employees who picketed but did not call their supervisor in advance about missing their shift. No employee was fired as a result of picketing, according to an NLRB official.

Nevertheless, the agency's Overland Park office issued an unfair labor practice complaint against Swope Ridge, arguing the workers were striking and thus protected under federal labor laws from disciplinary action. Swope Ridge argued that the union's notices were not adequate and did not substitute for the employees' responsibility to call if missing a shift.

Last March, administrative law judge Gerald A. Wacknov ruled in Swope Ridge's favor, and the NLRB's Washington board affirmed his ruling in late June.

Wacknov essentially decided that because these job actions were "intermittent" and "partial," they were not afforded the same protections under federal law as a full-fledged strike. Rather, it was part of the union's bargaining tactics.

"...the union's intent to continue engaging in repeated work stoppages as a part of its underlying bargaining strategy until a contract is reached, absent any contrary evidence, may be clearly presumed; and the strikes were in furtherance of this strategy," he wrote.

The union said it was disappointed in the decision, saying no employee struck more than once.

"The union did not plan a series of intermittent strikes," responded Craig Becker, a lawyer for the union. "Rather, it struck only twice, on different weekends because employees work every other weekend and the union wanted all employees to have the opportunity to participate in the strike."

Becker said the union is considering asking to have the case reviewed in federal appeals court.

A lawyer for Swope Ridge did not return calls for comment.

**To reach Randolph Heaster, call 816- 234-4746 or send e-mail to [rheaster@kcstar.com](mailto:rheaster@kcstar.com).**