WASHINGTON SUPREME COURT NO. 89008-9

Court of Appeals No. 68651-8-I

DEBRA PUGH, AARON BOWMAN, and FLOANN BAUTISTA, on behalf of themselves and all persons similarly situated

Respondents,

v.

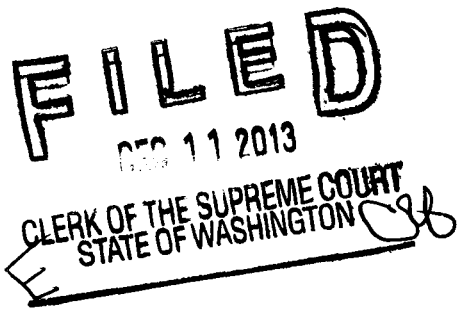
EVERGREEN HOSPITAL MEDICAL CENTER a/k/a KING COUNTY PUBLIC HOSPITAL DISTRICT NO. 2

Appellant

WASHINGTON STATE NURSES ASSOCIATION,

Appellant/Intervenor.

PETITION FOR REVIEW



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I. INTRODUCTION

Petitioners Debra Pugh, Aaron Bowman, and FloAnn Bautista and approximately 1,300 other similarly situated nurses ("the Nurses") currently and formerly employed by Evergreen Hospital Medical Center ("Evergreen") sued Evergreen for denying them regular meal and rest breaks in violation of the Washington Industrial Welfare Act. In a separate lawsuit, the Washington State Nurses Association ("WSNA") brought a similar lawsuit against Evergreen for denying its members rest breaks under state law. Without informing the Nurses, WSNA and Evergreen reached a settlement and jointly dismissed WSNA's case. Pursuant to the settlement, Evergreen sent partial payment for missed breaks to its nurses.

WSNA intervened in the Nurses' case and attempted to block the Nurses from proceeding against Evergreen. The Nurses moved for class certification and a summary judgment that WSNA lacked standing to bring its lawsuit for monetary damages on behalf of its members for missed rest break. The Nurses also argued that, if WSNA was authorized to settle members' claims, it should have sought approval of its settlement agreement. The trial court certified the class and held the settlement checks sent pursuant to the settlement agreement with WSNA would not preclude the Nurses from seeking additional relief in this case.

In separate appeals, WSNA and Evergreen both obtained discretionary review. In two published decisions issued October 28, 2013, the Court of Appeals reversed the trial court's summary judgment in favor

of the Nurses. In the first (number 68651, to which this petition relates), the court held that WSNA had standing to sue for damages for its members. In the other (number 68550), It held that WSNA had standing to sue for damages for its members, that court supervision and review was not required to afford absent nurses due process or protect their rights to compensation for missed rest breaks and that the checks issued to the Nurses pursuant to the settlement could be used by Evergreen to support an affirmative defense of "accord and satisfaction" or "release" that would potentially bar the rest break claims of most nurses in the case.[1]

This Court should take review under RAP 13.4(b)(1) because the Court of Appeals' decision is contrary to the well-established rule that a union cannot represent its members in claims for damages except where those damages are easily calculable from available, objective information. *International Association of Firefighters, Local 1789 v. Spokane Airports*, 146 Wn.2d 207, 45 P.2d 186 (2002). The Court of Appeals decision, if allowed to stand, would turn a very narrow exception in the rules of associational standing into a gaping one.

[1] Because the Court of Appeals declined to consolidate WSNA's and Evergreen's separate appeals and issued separate decisions, the Nurses are filing two petitions with this Court. In this brief, the Nurses discuss the lower court's erroneous interpretation of associational standing. In the accompanying petition, in case no. 68550-3-I, the Nurses contend in the alternative that if WSNA *did* have standing to bring the Nurses' claims for damages, such settlements should be treated like any other representative action, requiring court review and approval and court-supervised notice to the absent parties with an opportunity to be heard.

II. ISSUES PRESENTED FOR REVIEW

Does a union have standing to seek money damages for injuries to its members when there are no employer records from which to easily ascertain the amount of the members' damages with certainty?

III. STATEMENT OF THE CASE

A. Two Lawsuits Were Filed Against Evergreen Hospital on Behalf of Nurses Who Were Denied Rest Breaks, One by Individual Nurses and Another by Their Union.

In September 2010, Debra Pugh and Aaron Bowman filed this lawsuit on behalf of themselves and 1,300 other nurses (Nurses) who worked for Evergreen Hospital Medical center (Evergreen) and were denied their 10-minute rest breaks and 30-minute meal breaks required by the Washington Industrial Welfare Act, RCW 49.48 et seq. CP 1-5.

Two days earlier, the Washington State Nurses Association (WSNA) filed a similar suit seeking damages for the nurses for missed 10-minute rest breaks.[2] CP 283-287. In its complaint, WSNA claimed it had associational standing to sue Evergreen for monetary damages on behalf of its members. CP 285.

[2] Unlike the Nurses, WSNA chose not to bring any meal break claim for the Nurses. CP 283-287. Additionally, despite the existence of a collective bargaining agreement between WSNA and Evergreen, which provided nurses with more generous rest breaks than state law requires and gave WSNA the right to arbitrate Evergreen's failure to provide them, WSNA chose not to take any action under the CBA. CP 303-341; 343-377.

B. Without Informing the Nurses, WSNA Quickly Settled The Claims at Issue and Dismissed Their Case.

As evidenced by Evergreen's Answer to WSNA's complaint, the issue of whether WSNA had standing to bring a claim for damages on behalf of the Nurses was immediately in dispute. CP 168 (Affirmative Defense No. 6). The Nurses attempted to cooperate with WSNA on prosecuting the overlapping rest break claims, but were rebuffed.[3] On February 4, 2011, the Nurses moved to intervene in WSNA's case to challenge WSNA's standing to sue for damages on their behalf and to protect the nurses' interests in getting full back pay damages for missed breaks. CP 289-301. But before the trial court could rule on the Nurses' motion to intervene or decide the issue of standing, on February 10, 2011, WSNA and Evergreen entered into a settlement agreement. CP 153-160. Under the agreement, WSNA settled the rest break claims of over 1,300 nurses for $375,000.[4] CP 155-156.

On February 18, 2011, WSNA and Evergreen filed a "joint motion" for court approval of their settlement. CP 186-198. The trial court set a March 18 hearing date on the motion and a briefing schedule. CP 162. By its express terms, the scheduling order provided a date upon which the Nurses could object to the settlement and challenge WSNA's

[3] Detail about the attempts to cooperate can be found in the Nurses' Third Party Motion to Intervene. CP 295-297.

[4] This number represents approximately 5%-10% of the wages that Evergreen likely owes to nurses for breaks missed since September 2007. CP 124-125.

standing to sue on their behalves for monetary damages. *Id.*; CP 297-298. The deadline for filing objections was set for March 9, 2011. CP 162.

On March 2, 2011, a week before the deadline to file their objections to the settlement, the Nurses took the deposition of Evergreen through its CR 30(b)(6) representative, Kathleen Groen. CP 261. At the deposition, Evergreen admitted that it had no records showing when nurses missed breaks or the amount of back pay owed. CP 262-266; *see also* CP 417-423 (Answers to the Nurses' Requests for Admission) (admitting no documents exist showing how many rest breaks were missed, when, and by whom.). It admitted that it had no way of knowing how to calculate damages due to the lack of employer records:

> Q. Had there been any sort of calculation done about what type of pay or damages would be owed to nurses for missed rest breaks?
>
> A. There were informal discussions based on other lawsuits that were public and arbitrations that were public, along with the discussion that we did not have any way of knowing how many of our nurses missed rest breaks and did not have any strong sense of knowing how to calculate it, other than we believed otherwise, contrary to the lawsuits, and believed that many, many of our nurses do regularly get their rest breaks.
>
> . . . .
>
> Q. What sort of calculations did you make based on these factors you told me?
>
> A. It was an assumption, it was a calculation, and we –first, we started with the belief that many of our nurses get their appropriate rest breaks, either interrupted or intermittent. We then looked at our

> numbers of nurses and we looked at their part-time or full time status, just generally, looking at it regarding the majority of our nurses do not work full time, they work less than 40 hours a week. **We looked at the other** settlement, off [sic] the **settlements that we were aware of, and we came up with an estimated amount of 600,000 [dollars].**

CP 273-276 (emphasis added). Evergreen further admitted it had no evidence to dispute numerous declarations of nurses saying they missed breaks to varying degrees. CP 262-281. The parties were on notice that these admissions would likely be fatal to WSNA's claim that it had associational standing to seek damages on behalf of its members, because the Nurses has already briefed the issue in their motion to intervene that was set for oral argument three days later, on March 5, 2011. CP 289-301.

On March 4, 2011, a day before the hearing on the Nurses' Motion to Intervene, Evergreen and WSNA withdrew their motion for court approval of the settlement and filed a stipulation to dismiss WSNA's lawsuit immediately. The trial court struck the motion and briefing on the issues of standing, intervention, and joint settlement approval and dismissed the case. On March 17, 2011, Evergreen sent "settlement checks" to nurses pursuant to its settlement with WSNA. CP 177.

C. WSNA Intervened in the Nurses' Case to Prevent Them from Obtaining Complete Relief for their Missed Rest Breaks.

In anticipation that Evergreen would seek to exclude from this action class members who cashed the "settlement checks", the Nurses

amended the complaint in this lawsuit to include class representative FloAnn Bautista, who had endorsed the settlement check. CP 34-42.

On August 8, 2011, the Nurses filed a motion for class certification. CP 11-33. While the Motion for Class Certification was pending, WSNA moved to intervene in this lawsuit to oppose and dispute that "the putative subclass of employees who accepted payment for missed rest breaks . . . are entitled to further compensation from the Defendant." CP 85-89. The motion to intervene was granted on October 17, 2011. Id.

On January 6, 2012, the Nurses filed a Motion for Partial Summary Judgment, asking the trial court to dismiss Intervenor WSNA's claim and Evergreen's defense that the "settlement checks" barred the Nurses from receiving full compensation for missed breaks in this class action. Evergreen and WSNA filed briefs in opposition to both motions, and oral argument was held on February 3, 2012 in King County Superior Court.

On March 14, 2012, Judge Harry McCarthy granted the Nurses' Motion for Class Certification. CP 548-551. On the same day, he granted the Nurses' Motion for Partial Summary Judgment, concluding that class members who cashed "settlement checks" sent pursuant to WSNA's settlement with Evergreen were not barred from seeking further compensation in this class action, because WSNA had lacked associational standing to bring a lawsuit for damages on behalf of its members in the first place. CP 552-563. Accordingly, the settlement agreement was unenforceable. *Id.*

On April 13, 2012, WSNA and Evergreen sought discretionary review of the trial court's decision. CP 564-584. On August 1, 2012, Commissioner Mary Neel granted review. The Court of Appeals reversed the trial court's order granting summary judgment for the Nurses and remanded for "reinstatement of the settlement agreement" between WSNA and Evergreen. Slip Op. at 6.

IV. ARGUMENT

The Court of Appeals' decision in this case conflicts with this Court's decision in *International Association of Firefighters, Local 1789 v. Spokane Airports*, 146 Wn.2d 207, 45 P.2d 186 (2002), and departs sharply from the prevailing view in federal court decisions relating to associational standing.

A. Under This Court's Precedent, WSNA Had No Standing Because the Nurses' Damages Could Not Be Proven Without Individual Participation.

It is well established that when a union or other organization seeks relief on behalf of its members, it must show it has standing to bring suit. Standing is a question of law reviewed de novo. *United Union of Roofers, Waterproofers*, and *Allied Trades No. 40 v. Insurance Corp. of Am.*, 919 F.2d 1398, 1399 (9th Cir., 1990).

The United States Supreme Court first articulated the principle of associational standing in *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 97 S. Ct. 2434, 53 L. Ed. 2d. 383 (1977). In that case, the Court held that an association has standing to bring suit on behalf of its members

when the following criteria are satisfied: (1) the members of the organization would otherwise have standing to sue in their own right; (2) the interests that the organization seeks to protect are germane to its purpose; and (3) neither the claim asserted nor relief requested requires the participation of the organization's individual members. *Id.* at 343; *See also Spokane Airports*, 146 Wn.2d at 213-214.

In applying this test, federal and Washington state courts have distinguished between suits for injunctive relief and suits for damages.[5] Federal courts have repeatedly concluded that the third prong of the *Hunt* test cannot be met when an association seeks monetary damages for its individual members, because "claims for monetary relief necessarily involve individualized proof and thus the individual participation of association members." *Ins. Corp. of Am.*, 919 F.2d 1398, 1400 (9th Cir. 1990). No federal court has ever permitted an association to seek monetary relief on behalf of its members pursuant to a claim of associational standing. *Sanner v. Board of Trade of Chicago*, 62 F.3d 918, 922-923 (7th Cir. 1995); *United Union of Roofers v. Ins. Corp. of Am.*, 919 F.2d 1398, 1400 (9th Cir. 1990); *Bermudez v. Hernandez*, 245 F. Supp. 2d 383, 386 (D.P.R. 2003).

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[5] The Court of Appeals correctly states that the trial court erred by asserting "Washington law is clear that a union may only represent its membership on a claim for damages and not for injunctive relief." Slip Op. at 5. But the trial court's misstatement of this general rule was clearly a scrivener's error, and not a substantive one. This is evident from the analysis that followed the misstatement and its ultimate conclusion that WSNA only lacked standing to bring a suit for *damages* on behalf of its members. WSNA's standing to bring a claim for injunctive relief was not an issue. CP 90-122; CP 517-547.

In *Spokane Airports*, this Court was called upon to determine for the first time whether Washington would adopt the federal "bright line" rule that an organization does not have associational standing to bring a suit for damages on behalf of its members. This court ultimately rejected a *per se* rule and adopted a narrow exception for cases where the damages are "certain, easily ascertainable, and within the knowledge of the defendant." *Id.* at 215-216. This Court reasoned that when damages meet these criteria, individual association members' participation may not be necessary to prove damages, depending on the facts of the particular case.

In *Spokane Airports*, a firefighters union sued on behalf of its members for reimbursement for Social Security and Medicare monies that were improperly drawn from their paychecks and matched by their employer. *Id.* at 211. There, it was undisputed that the sums due to each employee could be precisely calculated as the exact amount withdrawn from their paychecks and then matched by the employer. Based on these facts, this Court concluded that because the "exact amount of relief due to each individual [was] known" through employer records, the union had standing to bring a lawsuit for damages on behalf of its members. *Id.* at 216-217.

The holding in *Spokane Airports*, as it relates to suits for damages, has been applied only one time since, in *Teamsters v. Local Union No. 117 v. Department of Corrections*, 145 Wn. App. 507, 187 P.3d 754 (2008). In that case, the Court of Appeals held that a union representing a prison emergency response team had associational standing to sue the

Department of Corrections for recovery of wages for time spent carrying a pager while off duty.

As in *Spokane Airports*, the exact amount of relief due to each individual employee was known, because all of the employees were required to carry pagers while off-duty. *Id.* at 513. Therefore, determining the amount of wages owed to each employee was "easily ascertained" from employee pagers. *Id.* As in *Spokane Airports*, calculating wages owed to the employees in Teamsters was "nothing more than a mathematical exercise" using electronically stored information on employer provided pagers and employer time records. *Id.*

Under the facts here, the participation of WSNA's individual members is necessary to determine the amount of relief. In contrast with *Spokane Airports* and *Teamsters*, there are no records whatsoever from which the amount of monetary relief owed the individual nurses can be ascertained. CP 417-423; CP 262-266. Evergreen admitted that it did not record missed rest breaks. CP 262-266; CP 417-423. Furthermore, the parties agree that nurses missed breaks at rates that varied by nurse and department. CP 552-563; Slip Op. at 4. Under these circumstances, the damages owed to individual nurses cannot be accurately estimated without individual nurse participation; the amounts are not easily ascertainable without nurse participation; and the amounts are not within the knowledge of Evergreen. Accordingly, under *Spokane Airports*, WSNA did not have standing to sue for damages on behalf of its members.

B. The Court of Appeals Misconstrued Precedent and the Purpose Behind This Court's Limitation on Associational Standing.

The Court of Appeals misconstrued *Teamsters* and the purpose behind the limitation on associational standing in this context. The court began by reciting the rule from *Spokane Airport* that a union has standing to seek member damages when the member's participation "is not necessary to prove the damages that are asserted" because "the amount of monetary relief requested on behalf of each employee is certain, easily ascertainable, and within the defendant's knowledge." Slip Op. at 2. But then the court proceeded to dismantle those requirements entirely, ultimately concluding that "the participation of some nurses to establish damages does not abrogate the union's standing to prosecute such cases." Slip Op. at 5.

To do this, the court drew a distinction between "participation" as a witness and actual joinder as a party. "Standing is not defeated simply because individual association members may be called as witnesses." Slip Op. at 3. But of course that is exactly what the rule in *Spokane Airports* intended—that a union could not seek damages on behalf of members if the amount of each member's damages could not be calculated without individual testimony.

The court quoted a passage from *Teamsters* which appeared to support the witness/party distinction, but in fact does not. After concluding that damages could be easily ascertained through employer records, the *Teamsters* court addressed the defendant DOC's argument

that the union lacked standing because individual union members would have to testify "on the issue of liability." 145 Wn. App. at 513. The court explained that just because employees may need to testify as witnesses to establish the employer's *liability*, the union still had standing to sue where the amount of *damages* did not require individual testimony. "Here, the calculation of damages does not require individual determination" *Id.*

The Court of Appeals here misconstrued the *Teamsters* court's distinction between liability witnesses and damages witnesses to support a distinction between damages witnesses and necessary *parties*. The latter distinction makes no sense and would obliterate any real limitation on associational standing. The reason that courts are wary of permitting associations, including unions, to sue for money damages on behalf of their members is because injunctive relief benefits all members of an association whereas the amount of monetary damages an employee suffers may vary from employee to employee. *Warth v. Seldon*, 422 U.S. 490, 515, 95 S. Ct. 2197 (1975). In this situation, the organization is not the best representative of any member's individual interests because the organization is seeking to maximize the membership's total gain, perhaps necessitating sacrifices from individual members. The logic supporting the exception in *Spokane Airports* in those cases where the amount due to individual members is "certain, easily ascertainable, and within the defendant's knowledge," is that in those narrow circumstances the members' interests are unlikely to be unfairly compromised. The Court of Appeals' decision, permitting associational standing in any case except

where individual members are *parties*, makes no sense and virtually eliminates any limitation.

The Court of Appeals also relied upon cases that held where employers have failed to keep adequate records of hours and wages paid, damages for underpayment may be established by "just and reasonable" inferences, including those drawn from representative testimony. Slip. Op. at 4 (citing *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687, 66 S. Ct. 1187, 90 L. Ed. 1515 (1956); *McLaughlin v. Ho Fat Seto*, 850 F.2d 586 (9th Cir. 1988)). This, too, is a non-sequitur. It is one thing to say that damages need not always be proved with certainty. It is an entirely different question whether one person or entity has standing to sue on behalf of others.[6] In *Spokane Airports* this Court set out a simple rule that unions may sue for money damages due to their members only where quantifying how much is due to individual members can be done easily using employer records. The Court of Appeals held to the contrary and its decision should be reversed.

As explained in the accompanying petition in no. 68550-3-I, if the Court of Appeals were correct, and WSNA did have standing, its

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[6] *McLaughlin* was a suit brought by the Secretary of Labor pursuant to specific authority granted under the Fair Labor Standards Act (FLSA), 29 U.S.C. § 216(c). It held that pursuant to *Mt. Clemons Pottery*, a district court could award damages to 28 employees "by just and reasonable inference" based on testimony of five "fairly representative" employees. *McLaughlin*, 850 F.2d at 589. This case in no way altered the clearly established and quite distinct proposition that a union generally has no standing to represent individual employee members in suits for monetary damages.

settlement of the Nurses' claims should have been subject to court supervision and approval.

V. CONCLUSION

For the foregoing reasons, the Court should accept review of the decision of the Court of Appeals under RAP 13.4(b)(1).

Dated this 27th day of November, 2013.

BRESKIN JOHNSON TOWNSEND, PLLC

By: _____
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Attorneys for Respondents

CERTIFICATE OF SERVICE

I, Jamie Telegin, certify and declare:

I am over the age of 18 years, make this Declaration based upon personal knowledge, and am competent to testify regarding the facts contained herein. On this 27th day of November 2013, I served true and correct copies of the document to which this Certificate is attached on the following in the manner listed below.

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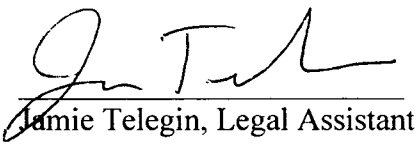
I certify under penalty of perjury pursuant to the laws of the State of Washington that the foregoing is true and correct.



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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DEBRA PUGH, AARON BOWMAN and FLOANN BAUTISTA on their own behalf and on behalf of all persons similarly situated,	)	No. 68651-8-I
Respondents,	)	DIVISION ONE
v.	)	PUBLISHED OPINION
EVERGREEN HOSPITAL MEDICAL CENTER a/k/a KING COUNTY PUBLIC HOSPITAL DISTRICT NO. 2,	)	
Appellant,	)	
WASHINGTON STATE NURSES ASSOCIATION,	)	FILED: October 28, 2013
Appellant.	)	

Grosse, J – A union has standing to sue in its associational capacity for injunctive relief and back pay for missed rest breaks incurred by its members when, as here, damages can be established without requiring the participation of the individual union members. Thus, the trial court erred by invalidating a settlement agreement between the union and the employer based on the union's lack of standing. Accordingly, we reverse.

FACTS

The Washington State Nurses Association (WSNA) appeals from the same trial court orders addressed in the linked appeal brought by Evergreen Hospital.[1] Thus, the procedural and substantive facts are identical to those set forth in the opinion for the

[1] Pugh v. Evergreen Hospital and Wash. State Nurses Ass'n, No. 68550-3-I (Wash. Ct. App. October 28, 2013).

Evergreen appeal. Accordingly, for efficiency for they will not be repeated here but will be incorporated by reference as they are necessary to the analysis.

ANALYSIS

WSNA contends that the trial court erred by concluding that WSNA lacked standing to sue Evergreen and invalidating the settlement agreement on that basis. We agree. An association has standing to sue on behalf of its members when the following criteria are satisfied: (1) the members of the organization would otherwise have standing to sue in their own right; (2) the interests that the organization seeks to protect are germane to its purpose; and (3) neither claim requires the participation of the organization's individual members.[2]

Unlike a suit for injunctive relief which generally benefits every member of an employee association equally, a suit for monetary relief may involve varying amounts of damages among employee members.[3] Thus, in a suit for money damages, the third requirement has been interpreted to permit associational standing when "an individual association member's participation is not necessary to prove the damages that are asserted on behalf of the members by the association."[4] This is established when the record shows that the amount of monetary relief requested on behalf of each employee is certain, easily ascertainable, and within the defendant's knowledge.[5]

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[2] International Ass'n of Firefighters, Local 1789 v. Spokane Airports, 146 Wn.2d 207, 213-14, 45 P.3d 186 (2002).
[3] Spokane Airports, 146 Wn.2d at 214.
[4] Spokane Airports, 146 Wn.2d at 216.
[5] Spokane Airports, 146 Wn.2d at 216.

In Teamsters Local Union No. 117 v. Department of Corrections (DOC),[6] we held that a union representing prison emergency response team members had associational standing to sue DOC for recovery of wages for time spent on call while off duty. We concluded that the amount of wages sought was both easily ascertainable and within the employer's knowledge because the employees carried pagers when off duty and wages could be calculated by subtracting time for regular shifts, overtime, on leave, or official standby. More importantly, we concluded that standing is not defeated simply because individual association members may be called as witnesses:

> [The employer] confuses participation as witnesses with participation as necessary parties to ascertain damages. The employees are not necessary parties; neither are they indispensable parties. Here, the calculation of damages does not require individual determination and the liability issues, though of a factual nature, are common to all. We refuse to adopt [the employer's] position that participation of an individual member as a witness abrogates the Union's standing to prosecute the employees wage claims.[7]

Here, the trial court concluded that WSNA lacked standing because the third requirement was not met:

> Spokane Airports holds that the union's standing to sue on an associational basis violates the third requirement unless "the amount of monetary damages sought on behalf of those members is certain, easily ascertainable, and within the knowledge of the defendant." 146 Wn.2d at 215-16. In Spokane Airports, the amounts due were withholdings for Social Security and employer matched funds, which were calculated exactly and were clearly known to the Spokane airport. [146 Wn.2d] at 217. In a similar case involving Special Emergency Response Team (SERT) employees at a prison seeking compensation for their on-call time, the Court of Appeals found standing for the union where calculating possible damages, "will then be nothing more than a mathematical exercise." Teamsters Local Union No. 117, 145 Wn. App. at 513.

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[6] 145 Wn. App. 507,187 P.3d 754 (2008).

[7] Teamsters Local Union No. 117, 145 Wn. App. at 513-14 (footnote and citation omitted).

> No such easily ascertainable amount of damages can be found here. The parties disagree vehemently as to even the possible amount of damages in this case. Plaintiffs assert that WSNA previously calculated the amount owed to the nurse was over $1 million dollars, and that Evergreen estimated the amount due as approximately $600,000, although Evergreen contests the basis and accuracy of this amount. Further, all parties agree that nurses in different sections of the hospital missed breaks at various rates. Unlike Spokane Airports and Teamsters Local Union No. 117, all parties agree there are no records from which Evergreen can precisely determine the amount owed. Under these circumstances, it is clear that WSNA would require the participation of at least some of the registered nurses who work at Evergreen Hospital.

We disagree with the trial court. First, the fact that the parties disagree about the amount of damages does not mean that there is no ascertainable amount of damages and WSNA is thereby prevented from establishing damages for purposes of standing. Rather, WSNA need only show that it was prepared to establish damages that did not require participation of the individual members. Indeed, WSNA and Evergreen considered various damages calculations and in fact determined damages owed to the nurses for the settlement agreement without requiring the participation of the individual nurses.[8]

Nor is the absence of records fatal to establishing WSNA's standing. Our courts have recognized that in wage and hour cases where employers have failed to keep adequate records, damages may be established by "just and reasonable inference."[9] Such inferences can be established by "representative testimony," as in McLaughlin v.

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[8] E.g., they used the number of hours worked per week over the alleged time period, the hourly rate, and the number of breaks to which they were entitled.

[9] Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680, 687, 66 S. Ct. 1187, 90 L. Ed. 1515 (1946).

Ho Fat Seto,[10] where the Ninth Circuit upheld the lower court's inference of a violation involving 28 employees based on the testimony of five witnesses. Similarly here, representative testimony from each department could serve as proof of the damages. As in Teamsters Local Union No. 117, the participation of some nurses to establish damages does not abrogate the union's standing to prosecute such cases.[11]

Additionally, the trial court's ruling disregards the fact that WSNA's lawsuit also sought injunctive relief, which does not require proof of individual damages. As WSNA correctly notes, the trial court's assertion that "Washington law is clear that a union may only represent its membership on a claim for damages and not for injunctive relief," is in error. As discussed above, our courts have recognized that associational standing to sue for injunctive relief is more easily established than standing to sue for monetary damages because it generally benefits members of an employee association equally.[12] Because WSNA had standing to sue, the trial court's ruling invalidating the settlement agreement for WSNA's lack of standing is without basis. Accordingly, we reverse.

WSNA also contends, as does Evergreen, that the trial court erred by invalidating the settlement agreement on the basis that the settlement was not court approved under CR 23(e), and by invalidating the individual settlements and releases entered into by WSNA members. As we conclude in our opinion in Evergreen's appeal, these arguments have merit and the trial court erred by invalidating the settlements on these

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[10] 850 F.2d 586, 589 (9th Cir. 1988), cert. denied, 488 U.S. 1040, 109 S. Ct. 864, 102 L. Ed. 2d 988 (1989).
[11] See 145 Wn. App. at 513-14.
[12] See Spokane Airports, 146 Wn.2d at 214.

bases.[13] Accordingly, we reverse the trial court's order granting summary judgment for Pugh and remand for reinstatement of the settlement agreement.

We reverse and remand.

WE CONCUR:

[13] See Evergreen, No. 68550-3-I, slip op. at 12.