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SUPREME COURT
OF THE STATE OF WASHINGTON

WASHINGTON STATE NURSES ASSOCIATION, on behalf of certain
employees it represents, and VIVIAN MAE HILL, individually and on
behalf of others similarly situated,

Petitioners,

v.

SACRED HEART MEDICAL CENTER,

Respondent.

**PROVIDENCE SACRED HEART MEDICAL CENTER'S
ANSWER TO AMICUS CURIAE BRIEF
OF DEPARTMENT OF LABOR & INDUSTRIES,
STATE OF WASHINGTON**

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I. INTRODUCTION

Like the amicus briefs of WSNA's fellow unions, L&I's amicus brief largely mirrors and recycles arguments put forward by WSNA. Accordingly, to avoid repetition, Providence Sacred Heart Medical Center¹ respectfully refers the Court to Sacred Heart's Answer to the Petition for Review and Sacred Heart's Answers to the amicus briefs of WSLC, 1199NW, UFCW 21, UFCW 141 and ANA.

II. ARGUMENT

Unlike the union amicus briefs, however, L&I acknowledges that WSNA is proceeding with an overtime pay claim under the Minimum Wage Act (MWA). L&I also correctly states that overtime hours "are considered those hours worked in excess of 40 hours in a work week. RCW 49.46.130(1)." Amicus Brief of L&I at p. 1. But, L&I persists in making the same obtuse argument that even though Sacred Heart nurses did not work beyond 40 hours in a workweek when they missed rest breaks, the nurses are nevertheless entitled to overtime pay because *Wingert* used phrases such as "an additional ten minutes of labor" and "their work day is extended by 10 minutes" in order to explain why an

¹ The medical center is now referred to as *Providence Sacred Heart Med. Ctr. Washington State Nurses Ass'n v. Sacred Heart Med. Ctr.*, 163 Wn. App. 272, 275, n.2 (2011).

employer should pay additional compensation for missed rest breaks that violate the IWA.

A. The Court of Appeals Decision Addressed Any Confusion Created by Dicta in *Wingert*.

L&I purports to be “confused” by several phrases in the *Wingert* decision.² However, L&I should not be confused. As the Court of Appeals stated, these phrases, to be understood correctly, must be considered in the context of the IWA analysis in *Wingert* and must include the complete text of that analysis.

But argument from the statement in *Wingert* that the workday is “extended” ignores *Wingert*’s adjoining statement that employees deprived of rest periods “in effect, provid[e] Yellow Freight with an additional 10 minutes of labor *during* the first . . . hours of their . . . assignments.” *Id.* (emphasis added). Of the two *Wingert* characterizations, ***and for purposes of applying the MWA***, the description of the forgone rest period as providing the employer with additional labor *during* the work day is more accurate than treating it as an extension [of the workday], since entitlement to time and one-half under the MWA turns on the amount of time an employee is ***actually required to spend at the prescribed workplace***, with no reference to a number of hours she or he is “deemed” to have worked.

² L&I may not be as confused as it claims because in some parts of its brief, L&I is more cautious and simply says that the Court of Appeals decision “appears” to conflict with *Wingert*. Amicus Brief of L&I at p. 3.

Washington State Nurses Ass'n v. Sacred Heart Med. Ctr., 163 Wn. App. 272, 281 (2011) (emphasis added).

The Court of Appeals correctly determined that the statements in *Wingert* are not confusing in the context of this Court's explanation as to why an employee should receive individual compensation (and not be limited to injunctive relief, civil fines, or administrative agency orders) for a statutory violation under the IWA.³

The Court of Appeals decision directly addressed any confusion that might exist in the minds of the unions or L&I by pointing out that the statements in *Wingert* justifying an implied cause of action under the IWA could not be read selectively or in isolation as referring to actual hours worked for overtime pay purposes under the MWA.⁴

B. Sacred Heart Nurses Are Paid Double-time for Missed Rest Breaks.

L&I incorrectly asserts that "under the Court of Appeals analysis, the employee's additional labor during the missed rest break is treated

³ The argument before this Court in *Wingert* was whether an employee was entitled to any compensation for missed rest breaks since the employee had been paid for all time worked and there was nothing in the IWA or the rest break regulation allowing a private right of action for a missed rest break. Using the rationale that working through a rest break "in effect" provided additional benefits to the employer even though the employee did not end up working a longer day or a longer workweek, created an implied remedy under the IWA.

⁴ The arbitrator who considered the same issues raised by WSNA against Sacred Heart was likewise not confused and determined that compensation for missed rest periods for Sacred Heart nurses need not be paid at overtime rates as WSNA contended. *Washington State Nurses Ass'n v. Sacred Heart Medical Center*, 163 Wn. App. 272, 276 (2011).

differently than the same work at the end of the day.” Amicus Brief of L&I at p. 5. This is not true. The employee’s additional labor during the missed rest break is compensated at double-time in accordance with *Wingert*. The employee is paid once for the actual work performed and receives an additional payment for having missed the rest break.

III. CONCLUSION

The Court of Appeals decision correctly interprets the MWA as applied to the facts in this case. Therefore, there is no basis for accepting a petition for review in this case. WSNA did not argue that the nurses actually worked more than 40 hours in the situations at issue in this litigation. The argument of WSNA (and the amici) is addressed to certain statements that this Court made in connection with finding an implied remedy for missed rest breaks under the IWA. However, WSNA is not bringing a claim in this law suit against Sacred Heart for an alleged IWA violation. Instead, WSNA and the amici argue that selected statements from *Wingert* somehow created a new standard under the MWA as to when overtime pay is owed. The Court of Appeals correctly points out that not only do these statements in *Wingert* not involve an interpretation of the MWA but, when quoted in full and read in the context of an IWA claim, it is apparent that they are not meant to be applied in determining whether overtime pay is owed under the MWA.

Accordingly, the Court of Appeals decision does not conflict with this Court's decision in *Wingert*. If anything, it is consistent with the *Wingert* decision and there is no basis under RAP 13.4(b) for WSNA's petition for review. In addition, there is no need to accept review to correct any error in the Court of Appeals decision because there is none.

RESPECTFULLY SUBMITTED this 19th day of December,
2011.

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PROOF OF SERVICE

I, Valerie S. Macan, the undersigned, hereby certify and declare under that the following statements are true and correct:

1. I am over the age of 18 years, not a party to the within cause and am employed by the law firm of Davis Wright Tremaine. My business and mailing addresses are both 1201 Third Ave., Suite 2200, Seattle, Washington 98101-3045.

2. On the 19th day of December, 2011, I caused to be sent for filing an original of *Answer to Amicus Curiae Brief of Department of Labor & Industries, State of Washington* via email to:

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3. On the 19th day of December, 2011, I caused to be served a copy of *Answer to Amicus Curiae Brief of Department of Labor & Industries, State of Washington* via U.S. mail to:

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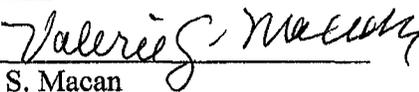
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