

No. 86563-9

SUPREME COURT
OF THE STATE OF WASHINGTON

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

Petitioners,

v.

SACRED HEART MEDICAL CENTER,

Respondent.

**PROVIDENCE SACRED HEART MEDICAL CENTER'S
ANSWER TO AMICUS CURIAE BRIEF
OF THE AMERICAN NURSES ASSOCIATION**

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I. INTRODUCTION

Other than to adopt WSNA's Statement of the Case, the amicus brief of the American Nurses Association (ANA) provides no authority or argument as to why the petition for review has merit. And, after offering bromides regarding Washington's overtime laws and rest break regulations, ANA concedes that "[t]he law in Washington is quite consistent with the advice of researchers and with ANA's policy." Amicus Brief of ANA at p. 6.¹

II. ARGUMENT

A. **No Dispute That Sacred Heart Nurses Are Paid for All Hours Worked.**

The ANA is under the erroneous impression that Sacred Heart nurses who work through their rest breaks perform additional labor over and above "the time for which [Sacred Heart] pays." Amicus Brief at p. 3. This is untrue. If a nurse works an eight-hour shift without taking any rest break, Sacred Heart pays the nurse for all of her time, i.e., eight hours worked. There is no failure to pay for the hours worked and WSNA does not contend otherwise.

¹ The ANA refers to the overtime laws generically and does not cite or analyze the Minimum Wage Act (MWA) on which the WSNA's claim for overtime pay rests. This may be because Amicus ANA does not understand the facts of the case and how overtime pay is determined under the MWA.

B. No Dispute That Sacred Heart Pays an Additional 15 Minutes for Each Missed Rest Break.

Sacred Heart compensates the nurse at the rate of 15 minutes pay for each missed rest break, in accordance with the IWA as interpreted by this Court in *Winger v. Yellow Freight Systems Inc.*, 146 Wn.2d 841, 50 P.3d 256 (2002). Thus, a Sacred Heart nurse who misses two rest breaks during an eight-hour shift is paid for 8 hours and 30 minutes – 8 hours worked and 30 minutes compensation for two missed rest breaks. Sacred Heart's pay practice with regard to missed rest breaks satisfies the IWA. WSNA does not contend otherwise, having not brought an IWA claim in this lawsuit.

C. Overtime Pay Is Not Owed Under the MWA.

ANA mimics WSNA's argument that Sacred Heart nurses are entitled to be paid for the missed rest breaks at overtime rates in addition to receiving 15 minutes of compensation for missed breaks and being paid for all hours worked. There are at least three reasons why ANA's argument is specious.

1. The Sacred Heart nurses have brought their claim under the MWA which governs the rate of pay; it does not require rest breaks or address remedies for missed rest breaks. Remedies for a missed rest break are addressed as an implied private right of action under the IWA.

2. Overtime pay under the MWA is only triggered when an employee works more than 40 hours in a workweek. Here, on cross-motions for summary judgment, there is no dispute that the Sacred Heart nurses did not work more than 40 hours when they missed a rest break. *Washington State Nurses Ass'n v. Sacred Heart Medical Center*, 163 Wn. App. 272, 276 (2011). All of their work occurred *during* the regular shift. *Id.* at 281. Rather than “working” by taking rest breaks during their shift, the Sacred Heart nurses were “working” by performing their usual duties. By substituting one form of work activity for the other, the nurses neither extended their workday nor their workweek. It remained the same.

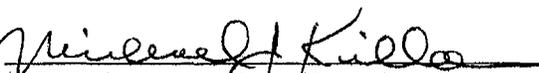
3. Even if the nurses were entitled to pay at overtime rates for missed breaks, they have no damages because they have already been paid 15 minutes for every missed 10-minute break. *Id.* at 282.

III. CONCLUSION

The policy concerns expressed by ANA regarding the need for rest breaks are not an issue in this litigation and, as ANA concedes, such concerns have been addressed in Washington law. In addition, Sacred Heart regularly schedules and allows nurses to take rest breaks. On specific occasions where a nurse believes that patient care takes priority over taking a rest break, Sacred Heart allows the nurse to report a missed rest break and receive double compensation for the time involved.

However, Sacred Heart lets the nurse leave at the end of his or her regularly scheduled shift and is not asked to work overtime which is consistent with ANA's recommended practices for avoiding fatigue.

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 and of *Answer to Amicus Curiae Brief of the American Nurses Association* via email to:

Clerk of Court: Ronald R. Carpenter
Supreme Court
Temple of Justice
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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 the American Nurses Association* via U.S. mail to:

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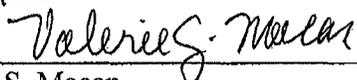
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Sent: Monday, December 19, 2011 4:51 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Killeen, Michael; Lehmann, Paula; Michel, Lynn
Subject: WSNA v. SHMC, No. 86563-9, Answers to 4 Amicus Briefs
Attachments: Answer to Dept of Labor and Indst.pdf; Answer to United Food and Comm Workers.pdf; Answer to WA State Labor Counsel.pdf; Answer to American Nurses Association.pdf

86563-9

Mr. Carpenter:

Attached please find Providence Sacred Heart Medical Center's Answers to the four Amicus Briefs:

1. American Nurses Association
2. United Food and Commerical Workers Local No. 21 and Local No. 141
3. Department of Labor and Industries
4. WA State Labor Counsel and SEIU Healthcare 1199NW

Let me know if you need anything else.

Thank you,
Valerie for Michael J. Killeen

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