

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 UNITED FOOD AND COMMERCIAL WORKERS
LOCAL NO. 21
AND UNITED FOOD AND COMMERCIAL WORKERS
LOCAL NO. 141,
UNITED STAFF NURSES UNION**

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ORIGINAL

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I. INTRODUCTION

Providence Sacred Heart Medical Center¹ responds to the 10-page amicus curiae brief of United Food and Commercial Workers Local No. 21 (UFCW 21) and United Food and Commercial Workers Local No. 141, United Staff Nurses Union, (UFCW 141) belatedly served and filed on or about December 1, 2011.²

At page 2, amici identify three “issues of concern.” None of the concerns are issues in the Petition for Review and, therefore, should be disregarded.³

To the extent that the amicus brief of UFCW 21 and UFCW 141 alludes to the same arguments as WSNA’s Petition for Review, Sacred Heart has already addressed these arguments in its Answer to the Petition for Review. Consequently, this Answer will respond only to the particular misstatements and erroneous arguments set forth in UFCW 21’s and UFCW 141’s amicus brief.

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

² The Court should disregard any arguments in the original over-length brief that are not contained in the revised brief.

³ The amicus brief of UFCW 21 and UFCW 141 does not address (or even cite to) the mandatory considerations governing acceptance of a petition for review as set forth in RAP 13.4(b). The brief is directed only at what amici contend are errors by the Court of Appeals in applying the facts to the law.

II. ARGUMENT

Pages 3 through 6 of UFCW 21's and UFCW 141's brief contain an irrelevant discussion of various Washington labor and employment law statutes and cases construing those statutes. Washington's labor and employment law statutes and case law are hardly unique. In any event, the only statute at issue here is the Minimum Wage Act (MWA). The Court of Appeals only decision in this case involved the application of the MWA to the facts of this case. *Washington State Nurses Ass'n v. Sacred Heart Medical Center*, 163 Wn. App. 272, 258 P.3d 96 (2011).

A. The Amicus Brief Agrees With Sacred Heart That the MWA and the IWA Have Different Purposes.

Amici UFCW 21 and UFCW 141 agree with Sacred Heart that the MWA and the IWA have different purposes.

The MWA protects workers by requiring employers to pay overtime for hours worked over forty in a week. The IWA requires employers to provide 10 minute rest breaks for every four hours worked.

Brief of Amici UFCW 21 and UFCW 141 at p. 6.⁴

⁴ The rest of the discussion at pps. 6-8 regarding possible "inconsistencies" between the two statutes does not relate to any issue raised in the Petition for Review nor the requirements under RAP 13.4(b)(1) or (4) for accepting a petition for review.

B. Sacred Heart Has No Incentive to Encourage Nurses to Violate Rest Break Rules.

Amici erroneously claim that the Court of Appeals decision in this case “create[s] an incentive for employers to violate the rest break rules in order to avoid overtime obligations under RCW 49.46 (MWA).” Amicus Brief at p. 2. Amici provide no evidence for this assertion. That is because it is not supported in the record.

Nurses are professional employees who work in a service environment where they have significant responsibility for managing their own patient care workload. Nurses have considerable autonomy to decide whether, in their judgment, they need to continue actively providing patients with medical services rather than take a mandatory rest period. Most nurses on most occasions take their rest breaks. If they decide to skip a break, they submit a form in order to receive compensation. Sacred Heart not only pays the nurse for the time actually worked performing the services but pays an additional fifteen minutes for every missed rest break so that the nurse is receiving at least double time for the missed rest break. Also, the nurse who skips a rest break is entitled to leave work at the end of his or her shift without extending the length of the shift. Thus, Sacred Heart has no financial incentive to encourage nurses to skip their

mandatory breaks. It costs Sacred Heart twice as much to have a nurse skip her rest break, than to take her rest break.

Nonetheless, amici UFCW 21 and UFCW 141 go through a convoluted hypothetical argument attempting to illustrate the alleged incentives for employers to encourage employees to skip rest breaks in violation of state law. But, as pointed out previously, there is no evidence that Providence Sacred Heart Medical Center achieved any financial benefit when nurses skipped their rest breaks. As the Court of Appeals opinion states, Sacred Heart paid nurses fifteen minutes pay for every missed rest period, which is exactly what WSNA seeks in this litigation. *Washington Nurses Ass'n*, 163 Wn. App. at 276. Thus, UFCW 21's and UFCW 141's argument about incentives is inaccurate from a factual standpoint. It is also inaccurate from a legal standpoint. The MWA requires that employers not employ any employee "for a work week longer than 40 hours unless such employee receives compensation for his or her employment in excess of the hours above specified at a rate of not less than one and one-half times the regular rate at which he or she is employed." RCW 49.46.130(1). "Hours worked" is defined by WAC 296-126-002(8) to mean "all hours during which the employee is authorized or required by the employer to be on-duty on the employer's premises or at a prescribed workplace." Without addressing these

statutory and regulatory definitions, UFCW 21 and UFCW 141 argue that overtime pay should be based not on “hours worked” but on how hard an employee is working when he or she works eight hours. Amicus Brief at p. 9. Putting aside whether some employees can accomplish as much or more work in less time and still take their breaks, the fact remains that neither the nurse who takes her breaks or the nurse who skips her breaks has more than eight “hours worked” as defined by the MWA. The degree of exertion or amount of effort is not a measure of whether overtime pay is owed.

The inequity of the two individuals receiving the same amount of credit for hours worked, when one individual gets rest breaks and the other does not, is addressed under the IWA by awarding additional compensation for the violation of the rest period regulation such that the employee who missed the rest breaks ends up being compensated for more than eight hours whereas the employee who took rest breaks is paid for eight hours and no more.

C. The Court of Appeals Decision Is Consistent With This Court's *Wingert* Decision.

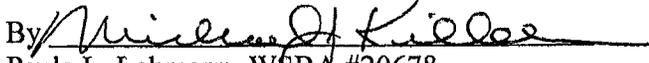
At page 3 of the brief, amici UFCW 21 and 141 repeat the argument of WSNA and its fellow unions that the Court of Appeals decision is allegedly “at odds” with this Court’s decision in *Wingert v.*

Yellow Freight Systems, Inc., 146 Wn.2d 841, 50 P.3d 256 (2002), which it is not.

III. CONCLUSION

The MWA governs the rate of pay for hours worked. The IWA addressed rest break requirements. An employee who works the same length work shift as another employee does not have any more "hours worked" for overtime pay purposes when he or she misses rest breaks. The remedy for missed rest breaks is addressed under the IWA as interpreted by this Court in *Wingert*. Sacred Heart fully complied with both the MWA and the IWA in this case. Consequently, there is no basis for granting WSNA's Petition for Review.

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:

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2. On the 19th day of December, 2011, I caused to be sent for filing an original of *Answer to Amicus Curiae Brief of United Food and Commercial Workers Local No. 21 and United Food and Commercial Workers Local No. 141, United Staff Nurses Union* 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 United Food and Commercial Workers Local No. 21 and United Food and Commercial Workers Local No. 141, United Staff Nurses Union* via U.S. mail to:

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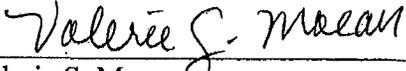
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