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NO. 97532-9

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

WASHINGTON STATE NURSES ASSOCIATION,

Respondent/Cross-Appellant,

v.

YAKIMA HMA LLC, d/b/a YAKIMA REGIONAL MEDICAL AND
CARDIAC CENTER,

Appellant/Cross-Respondent.

**APPELLANT/CROSS-RESPONDENT YAKIMA HMA, LLC, D/B/A
YAKIMA REGIONAL MEDICAL AND CARDIAC CENTER'S
RESPONSE TO AMICUS BRIEF FILED BY THE UNITED FOOD
AND COMMERCIAL WORKERS LOCAL NO. 21, SEIU 1199NW
AND AMERICAN NURSE ASSOCIATION**

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TABLE OF CONTENTS

	Page
SUMMARY OF RESPONSE.....	1
CONCLUSION.....	4

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Int'l Ass'n of Firefighters Local 1789 v. Spokane Airports,</i> 146 Wn.2d 207, 45 P.3d 186 (2002).....	2
Other Authorities	
<i>Addressing Nurse Fatigue to Promote Safety and Health: Joint Responsibilities of Registered Nurses and Employers to Reduce Risks</i> adopted by ANA Board of Directors, September 10, 2014	3

SUMMARY OF RESPONSE

First, despite UFCW's¹ argument to the contrary, principles of liberal construction offer no guidance on the issues before the Court. Those principles apply when the Court must decide the scope and reach of applicable statutes. But this case presents no statutory construction issues: Yakima Regional's Petition for Review simply asks the Court to affirm well-established limitations on when unions have associational status to bring civil lawsuits on behalf of members.

Second, although UFCW's arguments and citations are drawn from acute care settings inapplicable here, there is no dispute that home health and hospice nurses need rest and should take meal periods during their scheduled 8-hour shifts.² Indeed the record shows the many steps Yakima Regional took to ensure that hospice and home health nurses, who work exclusively in the field, had the necessary resources to allow them to self-schedule meal periods. Furthermore, the record shows that Yakima Regional paid nurses for all the working time, including all missed meal periods, that they verified in their time records.

¹ The amicus brief was filed on behalf of the United Food and Commercial Workers Local No. 21, SEIU 1199NW and American Nurses Association, collectively referred to as "UFCW."

² This case raises no issue with rest breaks. Accordingly, Yakima Regional does not address UFCW arguments related to rest breaks.

Third, UFCW misses the underlying issue of why associational standing should not be extended beyond the parameters set forth in *Int'l Ass'n of Firefighters Local 1789 v. Spokane Airports*, 146 Wn.2d 207, 45 P.3d 186 (2002). This case isn't about *whether* employees may seek relief – it is about *how* that relief should be sought. Like WSNA, UFCW incorrectly conflates class actions with associational standing, ignoring the important protections that class actions uniquely offer both the employer and employee. The expansion of associational standing, at the heart of this case, strips employees of the many protections provided by class actions, including the ability to opt in or opt out, select an attorney of their own choosing, expand claims outside the bargaining unit and exercise control over the disposition of the award. There is no dispute here that the home health and hospice nurses could have sought relief through a class action or individual claims. And, certainly, as the record shows, they could – and did – seek relief through the contractual grievance process initiated by WSNA in their behalf. The nurses here had ample means available to seek relief; associational standing did not afford the sole remedy for their claims.

Fourth and finally, the public policy considerations identified by UFCW, deterring fatigue and promoting safe nursing practices, are not advanced with the argued-for expansion of associational standing. These

public policy considerations are already fully addressed with current remedies for wage claims. Moreover, UFCW's argument that public policy is advanced when the burden of meal periods is placed on the employer is inconsistent with the American Nursing Association's ("ANA") white paper on nursing fatigue. According to amicus ANA, public policy considerations for health and safety require registered nurses to be accountable for obtaining needed meal periods. Indeed, ANA urges nurses to be responsible for taking meal and rest breaks and for implementing fatigue countermeasures to maintain alertness. *Addressing Nurse Fatigue to Promote Safety and Health: Joint Responsibilities of Registered Nurses and Employers to Reduce Risks* adopted by ANA Board of Directors, September 10, 2014.

Moreover, UFCW's position placing the responsibility for meal periods solely on the employer ignores the reality of in-home care as well as the public policy considerations associated with the provision of in-home care to vulnerable patients so that they do not need to be institutionalized. Nursing care in these settings is different from hospital bed-side nursing – it is unpredictable, there are no supervisors on site to monitor the nurses' work in real time or provide hands-on assistance in the moment. The home care nurse is vested with enormous autonomy and that autonomy does include the ability to self-determine how time is used

on a patient-by-patient basis. Employers must provide resources to assist home care nurses with time management but they cannot be present at the home bedside to make judgments about when meal breaks should be taken or direct nurses to take a meal period against the nurse's judgment.

The public policy considerations identified by UFCW do not require that associational standing be expanded to include cases in which individual testimony is necessary.

CONCLUSION

UFCW's proposed expansion of associational claims simply would not advance the principles or public policy considerations it has identified. This Court should hold that associational status does not extend to cases, such as this one, in which individual testimony is needed to establish liability and damages.

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RESPECTFULLY SUBMITTED this 29th day of October, 2019.

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DECLARATION OF SERVICE

I, Katie Angelikis, hereby declare under penalty of perjury under the laws of the State of Washington that on this 29th day of October, 2019, I caused the foregoing **APPELLANT/CROSS-RESPONDENT YAKIMA HMA, LLC, D/B/A YAKIMA REGIONAL MEDICAL AND CARDIAC CENTER'S RESPONSE TO AMICUS BRIEF FILED BY THE UNITED FOOD AND COMMERCIAL WORKERS LOCAL NO. 21, SEIU 1199NW AND AMERICAN NURSE ASSOCIATION** to be filed electronically with the Supreme Court of the State of Washington, and a true and correct copy of the same to be served upon the following by the method indicated:

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<i>Attorneys for Respondent/Cross-Appellant/Plaintiff Washington State Nurses Association</i>	
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Signed in Seattle, Washington, this 29th day of October, 2019.


Katie Angelikis, Legal Assistant

DAVIS WRIGHT TREMAINE LLP

October 29, 2019 - 4:37 PM

Transmittal Information

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Briefs - Answer to Amicus Curiae
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