

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
Feb 02, 2012, 3:19 pm  
BY RONALD R. CARPENTER  
CLERK

RECEIVED BY E-MAIL

No. 86563-9

IN THE 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,

Appellants,

v.

SACRED HEART MEDICAL CENTER,

Respondent.

FILED  
2012 FEB 10 A 10:10  
SUPREME COURT  
STATE OF WASHINGTON  
BY RONALD R. CARPENTER  
CLERK  
R/C

**SUPPLEMENTAL BRIEF OF *AMICI CURIAE***  
**WASHINGTON STATE HOSPITAL ASSOCIATION,**  
**MULTICARE HEALTH SYSTEM**  
**AND FRANCISCAN HEALTH SYSTEM**

Timothy J. O'Connell, WSBA No. 15372  
Karin D. Jones, WSBA No. 42406  
STOEL RIVES LLP  
600 University St., Ste. 3600  
Seattle, WA 98101  
Telephone: (206) 624-0900  
*Attorneys for Amici Curiae*

71173474.1 0074117-00059

ORIGINAL

**TABLE OF CONTENTS**

I. INTRODUCTION .....1

II. IDENTITY AND INTEREST OF AMICI CURIAE.....1

III. ISSUE OF CONCERN TO AMICI CURIAE .....3

IV. STATEMENT OF THE CASE.....3

V. ARGUMENT.....4

    A. Missed Rest Breaks Do Not Result in Actual  
        Overtime Hours.....5

    B. Missed Rest Breaks Do Not Constitute “Hours  
        Worked” for Purposes of the MWA’s Overtime  
        Provisions.....6

    C. The Court of Appeals’ Decision Is Consistent with  
        *Wingert*.....11

    D. Payment at Overtime Rates for Missed Rest Breaks  
        Is Not Required by the MWA or Consistent with its  
        Purpose.....14

    E. Violation of the IWA Does Not Automatically  
        Trigger the MWA’s Overtime Provisions.....18

VI. CONCLUSION.....19

## TABLE OF AUTHORITIES

### CASES

<i>Am. Fed. of Gov't Employees, Local 3721 v. Dist. of Columbia,</i> 715 F. Supp. 391 (D.D.C. 1989).....	10
<i>Anderson v. Dep't of Soc. &amp; Health Servs.,</i> 115 Wn. App. 452, 63 P.3d 134 (2003).....	7, 11
<i>Chelan Cnty. Deputy Sheriff's Ass'n v. Cnty. of Chelan,</i> 109 Wn.2d 282, 745 P.2d 1 (1987).....	11
<i>Lanehart v. Horner,</i> 818 F.2d 1574 (Fed. Cir. 1987).....	11
<i>O'Hara v. Menino,</i> 253 F. Supp. 2d 147 (D. Mass. 2003).....	11
<i>Seattle Prof. Eng'g Employees Ass'n v. The Boeing Co.,</i> 139 Wn.2d 824, 991 P.2d 1126 (2000).....	18
<i>Stevens v. Brinks Home Sec., Inc.,</i> 162 Wn.2d 42, 169 P.3d 473 (2007).....	7, 8
<i>Wash. State Nurses Ass'n v. Sacred Heart Med. Ctr.,</i> 163 Wn. App. 272 (2011).....	4, 5, 10, 13, 17
<i>Weeks v. Chief of Wash. State Patrol,</i> 96 Wn.2d 893, 639 P.2d 732 (1982).....	8
<i>Wingert v. Yellow.Freight Sys., Inc.,</i> 146 Wn.2d 841, 50 P.3d 256 (2002).....	11, 12, 13, 14
<i>York v. Wichita Falls,</i> 763 F. Supp. 876 (N.D. Tex. 1990).....	10

**STATUTES**

RCW 49.46.130(1).....10, 15

**REGULATIONS**

WAC 296-126-002(8).....6, 7, 8, 9

WAC 296-126-092(1).....5

WAC 296-126-092(4).....3

**OTHER AUTHORITIES**

Administrative Policy ES.A.8.1 (revised Nov. 6, 2006).....10

Administrative Policy ES.A.8.2 (no revision date) .....10

## **I. INTRODUCTION**

The Court of Appeals' determination that employees' missed rest breaks do not constitute additional "hours worked" pursuant to the Washington Minimum Wage Act ("MWA") is entirely consistent with longstanding Washington law, including the MWA itself. Indeed, the opposite conclusion would create a new extension of the MWA's overtime provisions, encompassing for the first time work performed within the regular forty-hour workweek. Such a holding would directly contradict the basic premise of the MWA. Nothing in the Industrial Welfare Act ("IWA"), MWA, or other Washington law supports the conclusion that missed rest breaks must be compensated at the overtime rates set forth in the MWA. The Court of Appeals' holding on this issue was wholly appropriate and should not be disturbed on appeal.

## **II. IDENTITY AND INTEREST OF AMICI CURIAE**

The Washington State Hospital Association ("WSHA") is a nonprofit membership organization representing Washington's 97 community hospitals and several health-related organizations. WSHA works to improve the health of the people of the state by becoming involved in all matters affecting the delivery, quality, accessibility, affordability, and continuity of health care. WSHA recognizes the critical

role nurses play in providing quality patient care, as well as the need for a healthy work environment. WSHA is thus acutely aware of the impact of these issues on the ability of hospitals to offer, and hospital employees to take, rest and meal breaks. WSHA is also deeply concerned about public policies mandating the need to control the costs of delivering health care in Washington. As such, WSHA seeks to avoid the imposition of costs on hospitals when the costs are not required by the law.

MultiCare Health System (“MHS”) and Franciscan Health System (“FHS”) are non-profit health care organizations based out of Tacoma, Washington. Their networks of hospitals and clinics provide health care services throughout the state of Washington. Both employ thousands of registered nurses in their various facilities in Washington. Both MHS and FHS therefore have a significant interest in the courts’ interpretation of the MWA’s potential application to missed rest breaks and in the proper method of calculating compensation for employees’ missed breaks.

WSHA, MHS and FHS (hereinafter, collectively “Amici”) were previously granted leave by the Court of Appeals to participate as *amici curiae* in this case, over the objection of Appellants.

### III. ISSUE OF CONCERN TO *AMICI CURIAE*

This Supplemental Brief of *Amici Curiae* addresses the issue of whether the Court of Appeals correctly held that a missed rest break does not constitute time worked and is therefore not subject to the MWA's overtime provisions.

### IV. STATEMENT OF THE CASE

Pursuant to the IWA, employers are required to provide employees with a ten-minute paid rest break during every four hours of work. WAC 296-126-092(4). When nurses employed by Respondent Sacred Heart Medical Center ("SHMC") missed their rest breaks during their shifts, SHMC compensated those employees for the missed breaks with an additional fifteen minutes of pay at the employees' regular rates of pay for each missed ten-minute break.<sup>1</sup> CP 233, 235. Nevertheless, Appellant Washington State Nurses Association ("WSNA") and one of its members (collectively, "the Nurses") brought this lawsuit against SHMC in 2007, seeking to recover additional compensation for employees' missed breaks. Specifically, the Nurses attempt to apply the overtime provisions of the

---

<sup>1</sup> SHMC and WSNA were parties to a collective bargaining agreement providing for fifteen-minute rest breaks, rather than the ten-minute breaks required by law. Thus, SHMC compensated employees for the additional five minutes specified in the contract.

MWA to missed rest breaks, claiming that SHMC should have compensated the Nurses at overtime rates of time and one half.

The Superior Court erroneously held that SHMC was obligated to pay the overtime rate for nurses' missed rest breaks. CP 1556. SHMC appealed to the Court of Appeals, Division III, which appropriately reversed the Superior Court's decision, holding:

[T]he Nurses argue that this so-called "extension" of their workday takes them beyond a 40-hour workweek, thereby entitling them, under the MWA, to be compensated for the time "exceeding" 40 hours at time and one half. Rather than being paid more than double-time for a foregone rest period, then, they seek compensation amounting to 2.5 times their regular rate of pay.

... Because the additional labor is provided during, not after, the employee's work assignment, and because the Nurses' claims are for rest periods denied during the first 40 hours of a given workweek, the 40-hour workweek is not exceeded and neither the language of, nor the policy reflected by, the MWA comes into play.

*Wash. State Nurses Ass'n v. Sacred Heart Med. Ctr.*, 163 Wn. App. 272, 281-82 (2011).

## V. ARGUMENT

The Court of Appeals correctly held that missed rest breaks within an employee's regular forty-hour workweek do not constitute additional

“hours worked” and therefore do not warrant the application of overtime rates under the MWA.

**A. Missed Rest Breaks Do Not Result in Actual Overtime Hours.**

The Nurses’ argument that they are entitled to additional compensation for missed rest breaks relies upon the legal fiction that their workweeks were purportedly “extended” beyond forty hours. In reality, the additional labor at issue was provided during the employees’ regular shifts and within the regular forty-hour workweeks. Thus, as the Court of Appeals accurately recognized, the MWA’s overtime provisions are completely inapplicable to rest breaks missed during an employee’s regular forty-hour workweek. *See Wash. State Nurses Ass’n*, 163 Wn. App. at 282.

For illustrative purposes, consider two nurses working an eight-hour shift, from 7:00 a.m. to 3:30 p.m.<sup>2</sup> One nurse takes both of her ten-minute rest breaks and clocks out after eight hours, at 3:30 p.m. The second nurse misses one of his ten-minute breaks. He, too, clocks out at 3:30 p.m. The nurse who worked through his ten-minute rest break still worked only during his regular eight-hour shift. His employer did not

---

<sup>2</sup> Including an unpaid thirty-minute meal period when the employee is relieved from duty. WAC 296-126-092(1).

require him to wait on the premises for an additional ten minutes at the end of his shift, representative of his missed break, before clocking out. The pertinent difference between the experiences of these two employees is therefore not the length of their shifts, but the amount of work they were required to perform during shifts of the same length. The purported “extension” of the workday beyond the eight-hour shift – and of the workweek beyond forty hours – does not exist in fact and therefore cannot trigger the overtime provisions of the MWA.

**B. Missed Rest Breaks Do Not Constitute “Hours Worked” for Purposes of the MWA’s Overtime Provisions.**

Despite the reality that employees who miss rest breaks during their regular workweeks do not actually work beyond the requisite forty hours, the Nurses argue that the missed breaks constitute additional “hours worked” as that term is defined for purposes of the MWA. The Nurses’ interpretation is entirely inconsistent with the MWA and with longstanding Washington law.

“‘Hours worked’ shall be considered 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 work place.” WAC 296-126-002(8) (emphasis added). This definition has been repeatedly

accepted by the Washington courts. *Stevens v. Brinks Home Sec., Inc.*, 162 Wn.2d 42, 47, 169 P.3d 473 (2007); *Anderson v. Dep't of Soc. & Health Servs.*, 115 Wn. App. 452, 456, 63 P.3d 134 (2003). Indeed, this Court has noted that this regulation is clear and unambiguous. *Stevens*, 162 Wn.2d at 47.

The analysis performed by the *Stevens* Court is instructive on this issue, as missed rest breaks are in stark contrast to the facts addressed in *Stevens*. 162 Wn.2d 42. First, the *Stevens* court noted that to constitute "hours worked" under WAC 296-126-002(8), the employee must be "on duty." In *Stevens*, extensive facts indicated that the employees in that case were, in fact, "on duty" while they drove their employer's trucks. For example, the employees could only use the trucks for company purposes, they were subject to the company's rules as to how they operated and maintained the vehicle, and they were subject to being called and redirected while driving. *Id.* at 48-49.

In addition, the *Stevens* Court held that an employee must be obligated to remain "on the employer's premises or at a prescribed work place" in order for time to constitute "hours worked." The Court engaged in an in-depth analysis of whether the trucks driven by the employees in that case were a "prescribed workplace," ultimately holding that they

were, due to the fact the trucks were integral to the employees' jobs and contained their necessary tools and equipment. 162 Wn.2d at 49.

In contrast to *Stevens*, the circumstances presented here simply do not involve "hours worked" beyond the employees' regular shifts. For the ten-minute period of time representative of an employee's missed break, that employee is not "on duty," but is instead free to spend her time in any manner she chooses. Neither is the employee required to remain on the employer's premises or under the employer's direction or control during that time period, but instead can leave work at the regularly-scheduled time.

Focusing on the degree of control exercised by the employer is entirely consistent with prior decisions from this Court. In *Weeks v. Chief of Washington State Patrol*, 96 Wn.2d 893, 639 P.2d 732 (1982), the Court dealt with state patrol officers who were required to remain on call during their lunch hours, including remaining in their area of patrol and available by radio or telephone. Applying WAC 296-126-002(8), the Court concluded that such a level of control rendered the lunch hour "work." 96 Wn.2d at 898.

The critical difference between a rest break actually taken during an employee's shift and payment for a missed rest break is thus apparent:

the employer lacks any control over the employee's time that the Nurses have attempted to graft onto the end of the actual shift. Such a period of time is thus simply not "hours worked" under the longstanding definition of that term. Because an employee who works through a rest break clocks out at the same time he would have normally clocked out, he is not "authorized or required by the employer to be on duty on the employer's premises or at a prescribed work place" for any time following the end of his regular shift. WAC 296-126-002(8). He has therefore not provided additional "hours worked" beyond his regular workday.

The Nurses' argument that they "provided the 'additional labor' while 'on duty' and while at the hospital . . . the moment they were worked through a state mandated rest break" misses the point. *See* Petition for Review, p. 15. There is no dispute that the employees were working when they provided labor during what would have been their rest breaks, but that work was not performed outside the forty-hour workweek. Nor can the Nurses explain why an imaginary ten minutes of "hours worked" should be added to their workweeks where the employees were not on duty or at the prescribed workplace during that time. The Court of Appeals' holding on this issue was entirely correct: "[E]ntitlement 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." *Wash. State Nurses Ass'n*, 163 Wn. App. at 281 (emphasis added).

Missed rest breaks are instead akin to compensated non-working hours. Washington's wage and hour laws recognize that employers may be obligated, under certain circumstances, to provide compensation to employees for time periods during which no work is performed.

Employers may compensate employees for paid holidays, vacation time, and sick leave. See Administrative Policy ES.A.8.1, "Overtime," § 5 (revised Nov. 6, 2006). Such payments are referred to as "[p]ayment for non-working hours," but they do not result in overtime obligations. *Id.*

Under Washington law, overtime is only due when an employer employs an employee for more than forty hours during a workweek, RCW 49.46.130(1), and this only applies to "hours worked." Administrative Policy ES.A.8.2, "How to Compute Overtime" (no revision date), at 1. The wage and hour laws do "not require that an employer pay overtime for vacation, holiday and sick leave time off, and such time need not be counted as 'hours worked' for overtime compensation." *York v. Wichita Falls*, 763 F. Supp. 876, 885 (N.D. Tex. 1990); see also *Am. Fed. of Gov't Employees, Local 3721 v. Dist. of Columbia*, 715 F. Supp. 391, 392

(D.D.C. 1989) (applying FLSA<sup>3</sup>; noting that an employee who takes eight hours of vacation leave and works an extra nine-hour shift in the same workweek is only entitled to one hour, rather than nine hours, of overtime); *Lanehart v. Horner*, 818 F.2d 1574, 1578 (Fed. Cir. 1987) (“paid leave shall not be included as hours worked in computing FLSA overtime” (internal quotation marks and citation omitted)); *O’Hara v. Menino*, 253 F. Supp. 2d 147, 154-57 (D. Mass. 2003) (paid lunch breaks were not “hours worked” under the FLSA where they were not predominantly for the employer’s benefit). Similarly, missed rest breaks, although compensable, do not constitute additional “hours worked” leading to overtime obligations.

**C. The Court of Appeals’ Decision Is Consistent with *Wingert*.**

The Nurses rely upon *Wingert v. Yellow Freight Systems, Inc.*, 146 Wn.2d 841, 50 P.3d 256 (2002), for their conclusion that employees who miss a rest break “are, in effect, providing [the employer] with an additional 10 minutes of labor” that purportedly “extends” their workdays.

---

<sup>3</sup> The Washington courts have frequently looked to analogous FLSA authority for support in interpreting the MWA’s provisions. *See, e.g., Chelan Cnty. Deputy Sheriff’s Ass’n v. Cnty. of Chelan*, 109 Wn.2d 282, 292-93, 745 P.2d 1 (1987). Indeed, Washington courts have referred to FLSA case law in construing what are, or are not, “hours worked.” *Anderson*, 115 Wn. App. At 457-59.

146 Wn.2d at 849. The Court of Appeals' decision was not, as the Nurses suggest, inconsistent with *Wingert*. The Nurses erroneously assert: "If the Court of Appeals agreed, as it must, that the missed rest breaks were 'additional labor,' then there is no basis in Washington law to deny the nurses the overtime rate for this additional labor, and the Court of Appeals put forth no policy reason for this new exemption from the overtime requirement." *Id.* at 10.

The exact opposite conclusion is true: there is no basis in Washington law for the proposition that working harder during one's shift leads to payment for "overtime" when the employee does not, in fact, work overtime. This is not a "new exemption" from the MWA's overtime requirements, but is entirely consistent with the basic premise that the MWA only provides for payment of overtime when the employee actually works more than forty hours.<sup>4</sup> To hold otherwise would be to create a new extension of the MWA. The Nurses themselves acknowledge that "hours

---

<sup>4</sup> The Nurses additionally assert that "the Court of Appeals created a new distinction between types of labor: one type that is provided 'during the workday' and one type of labor 'that extends the work day.' . . . It concluded that if additional labor does not 'extend' the workday . . . the MWA overtime requirements do not apply." Petition for Review, pp. 13-14 (emphasis added). Again, this distinction is not "new," but is in full accord with the underlying purpose of the MWA. Only those hours that extend the workday – and, ultimately, the workweek – result in overtime liability under the MWA.

worked less than 40 in a week are not eligible for the overtime rate.” *Id.* at 11.

*Wingert* did not hold that a missed rest break constitutes “hours worked” for purposes of calculating overtime under the MWA; the issue was just not addressed.<sup>5</sup> Neither did *Wingert* hold that missed rest breaks should be compensated at the overtime rate of time and one-half. Instead, *Wingert* simply held that the employee would be entitled to compensation for the equivalent of an additional ten minutes for the missed ten-minute break. *Id.* The “additional labor” provided by an employee who misses her rest break is provided within the regular forty-hour workweek, as the Court of Appeals correctly noted: “[A]rgument 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.”<sup>6</sup> *Wash. State Nurses Ass’n*, 163 Wn. App. at 281 (emphasis in original).

---

<sup>5</sup> Although *Wingert* discusses overtime wages, this was due to the fact that the missed rest breaks occurred during overtime shifts.

<sup>6</sup> Indeed, to the extent there is any “extension” of the workday, it is from providing 7 hours and 40 minutes of work during an 8-hour shift to providing 8 hours of work during an 8-hour shift.

Neither does the Court of Appeals' decision "create uncertainty," as alleged by Amicus the Department of Labor and Industries ("L&I"). See Amicus Curiae Memorandum of the Department of Labor and Industries, pp. 6-8. To the contrary, the Court of Appeals' decision was extremely clear in its holding that missed rest breaks within the forty-hour workweek do not create overtime warranting compensation at time and one half. *Wingert* did not address that issue; thus the Court of Appeals' decision in this case is the clear controlling law. L&I's professed "uncertainty" regarding the advice it provides to employers about this controlling precedent is not a substantive basis for overturning the Court of Appeals' sound decision.

**D. Payment at Overtime Rates for Missed Rest Breaks Is Not Required by the MWA or Consistent with its Purpose**

SHMC compensated the Nurses for their missed rest breaks at their regular rates of pay. Thus, an employee who worked through her rest break received double pay for that time period to compensate her for the fact she provided labor during what would have been her break. Neither *Wingert* nor the IWA require anything further, and application of the

MWA's overtime provisions would be arbitrary and entirely inconsistent with the MWA.<sup>7</sup>

The MWA's overtime provisions were crafted to address a discrete issue: compensation for employees who are required to work more than forty hours per workweek. *See* RCW 49.46.130(1). The overtime provisions were not crafted to address circumstances in which employees work forty or fewer hours, but are required to provide more actual labor within that forty-hour period. There is no justification for extending the MWA's overtime provisions to separate IWA violations where employees have not, in fact, worked more than forty hours.

The Nurses and *amici* in support of the Nurses' position have argued that failure to apply the MWA's overtime provisions to missed rest breaks will encourage employers to violate the rest break requirement. *See* Amicus Curiae Brief of Washington State Labor Council and SEIU Healthcare 1199NW in Support of Petition for Review, pp. 6-7; Amicus Brief of the American Nurses Association in Support of Petitioners, pp. 5-6. Employers, however, are appropriately required to compensate

---

<sup>7</sup> The Nurses' suggestion that "the Court of Appeals decision threatens the ability of all Washington workers to be paid for missed rest periods" is simply not grounded in reality. *See* Petition for Review, p. 6. Workers continue to be entitled to recover compensation for missed breaks.

employees for time in which an employee works through a rest break. Simply because the Nurses believe the consequences for a rest break violation should be harsher does not justify the arbitrary application of overtime provisions where they would not otherwise be available.<sup>8</sup>

*Amici* in support of the Nurses have also offered the hypothetical that an individual who takes her rest breaks and then works overtime will receive greater compensation than an individual who misses her breaks and provides the same amount of labor during her regular shift. *See* Amicus Curiae Brief of Washington State Labor Council and SEIU Healthcare 1199NW in Support of Petition for Review, pp. 6-7; Brief of the United Food and Commercial Workers Local No. 21 and United Food and Commercial Workers Local No. 141, United Staff Nurses Union, *Amici Curiae*, pp. 8-9. This hypothetical once again improperly ignores the fact that the former employee sacrifices twenty additional minutes of what would have been her personal time, while the latter employee is free to

---

<sup>8</sup> Neither do many of the policy issues cited by *Amici* in support of the Nurses pertain to the circumstances presented here. For example, the American Nurses Association cites “[t]he negative effect of extended shifts” and of “[n]urses working shifts in excess of 8 hours.” Amicus Brief of the American Nurses Association in Support of Petitioners, p. 5. The missed rest breaks at issue here did not involve “extended shifts” or work performed “in excess of 8 hours,” which is precisely why the MWA’s overtime provisions are inapplicable.

leave at the end of her shift. A difference in compensation is not, as *Amici* suggest, inequitable.

Similarly, the Nurses assert that “[u]nder the Court of Appeals’ analysis, . . . a worker who works 100 minutes beyond a normal 40-hour workweek is not entitled to one-and-one-half times his/her regular rate of pay for the additional 100 minutes, because 100 minute[s] of his/her regular workweek consisted of ten paid 10-minute rest periods.” See Petition for Review, p. 11 (emphasis in original). Such reasoning is an attempt to confuse the issue. The issue raised in the Court of Appeals’ decision does not involve an individual who works 100 minutes beyond his forty-hour workweek, on duty and obligated to remain on the work premises during that entire time. The Court of Appeals did not deal with such a reality, but an entirely fictional time period the Nurses claimed the employees should be “deemed” to have worked. The Court of Appeals properly rejected such a fiction, appropriately recognizing that the MWA is inapplicable when “the additional labor is provided during, not after, the employee’s work assignment, and . . . the 40-hour workweek is not exceeded . . .” *Wash. State Nurses Ass’n*, 163 Wn. App. at 282 (emphasis added).

**E. Violation of the IWA Does Not Automatically Trigger the MWA's Overtime Provisions**

The Nurses argue that the IWA and MWA should be interpreted together to provide overtime pay for violations of the IWA's rest break requirements. *See* Petition for Review, pp. 7-13. They are correct that if overtime hours had actually been worked, the MWA's overtime provisions could come into play. But that was not the case here.

Absent actual overtime hours worked, it would be arbitrary and inequitable to apply the MWA's overtime rate of time and one half to compensation for missed rest breaks. Indeed, SHMC was generous in its compensation for missed rest breaks at employees' regular rate of pay, rather than minimum wage. *See, e.g., Seattle Prof. Eng'g Employees Ass'n v. The Boeing Co.*, 139 Wn.2d 824, 991 P.2d 1126 (2000) (holding that the MWA does not obligate an employer to compensate an employee at contractually-agreed wage rates, but only requires payment of minimum wage).

Nowhere in the MWA is there a requirement that time worked within the forty-hour workweek must be paid at time and a half. The missed rest breaks at issue in this litigation did not involve hours worked

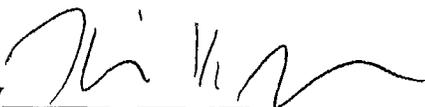
in excess of the forty-hour workweek and are not subject to the MWA's overtime provisions.

## VI. CONCLUSION

For the reasons stated above, *Amici* WSHA, MHS, and FHS urge this Court to uphold the August 25, 2011 decision of the Court of Appeals, Division III, with respect to the issues addressed above.

DATED this 2nd day of February, 2012.

By



Timothy J. O'Connell, WSBA No. 15372

Karin D. Jones, WSBA No. 42406

STOEL RIVES LLP

*Attorneys for Amici Curiae*

## PROOF OF SERVICE

I, Melissa Wood, the undersigned, hereby certify and declare under penalty 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 employed by the law firm of Stoel Rives LLP. My business and mailing address is 600 University Street, Suite 3600, Seattle, WA 98101.

2. On the 2nd day of February 2012, I caused to be sent for filing an original of the **Supplemental Brief of *Amici Curiae* Washington State Hospital Association, Multicare Health System, and Franciscan Health System** via email to:

Clerk of the Court: Ronald R. Carpenter  
Supreme Court  
Temple of Justice  
P.O. Box 40929  
Olympia, WA 98504-0929  
Email: [Supreme@courts.wa.gov](mailto:Supreme@courts.wa.gov)

3. On the 2nd day of February 2012, I caused to be served a copy of **Supplemental Brief of *Amici Curiae* Washington State Hospital Association, Multicare Health System, and Franciscan Health System** via U.S. Mail to:

David Campbell  
Dmitri Iglitzin  
Carson Glickman-Flora  
Schwerin Campbell Barnard & Iglitzen LLP  
18 W. Mercer Street, Suite 400  
Seattle, WA 98119

Martin S. Garfunkel  
Adam J. Berger  
Schroeter Goldmark & Bender  
810 Third Avenue, Suite 500  
Seattle, WA 98104

Aaron Streepy  
James McGuinness  
McGuinness & Streepy Law Offices, LLC  
2505 South 320th Street, Suite 670  
Federal Way, WA 98003

Alice L. Bodley  
General Counsel  
American Nurses Association  
8515 Georgia Avenue, Suite 400  
Silver Spring, MD 20910

Eleanor Hamburger  
Sirianni Youtz Spoonemore  
999 Third Avenue, Suite 3650  
Seattle, WA 98104

James Mills  
Assistant Attorney General  
Attorney General's Office  
1250 Pacific Avenue, Suite 105  
Tacoma, WA 98401-2317

Paula L. Lehmann  
Michael J. Killeen  
Davis Wright Tremaine LLP  
1201 Third Avenue, Suite 2200  
Seattle, WA 98101-3045

Executed at Seattle, Washington this 2nd day of February 2012.

  
\_\_\_\_\_  
Melissa Wood