

**No. 29366-1-III**

Brown, J. (dissenting) — The problem here is Sacred Heart Medical Center’s extraction of additional labor by working its nurses through their breaks. The question is not whether the nurses bargained for 15-minute breaks under their collective bargaining agreement (CBA), but whether Washington law applies when the nurses work without any break, collectively bargained for or not. When more than a 40-hour week is worked by the nurses, then the Minimum Wage Act (MWA) requires payment for a lost 10-minute rest period in a 4-hour working period at time and one half. RCW 49.46.130; WAC 296-126-092(4).

The federal court correctly recognized our legal landscape when remanding this matter to the superior court and noting the nurses’ “claims are based on a right conferred by the MWA, not the CBA” and while the CBA reference will be required, “there is no indication that determining a particular nurse’s wage will require *interpretation* of the CBA.” Clerk’s Papers (CP) at 249-50.

In my view, the superior court correctly applied *Wingert v. Yellow Freight*

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*Wash. State Nurses Ass'n v. Sacred Heart Med. Ctr.*

*Systems, Inc.*, 146 Wn.2d 841, 849, 50 P.3d 256 (2002) when granting partial summary relief to the nurses, and reasoning “for purposes of this case, ten minutes of nurses’ missed rest break is at issue here and must be compensated at the appropriate time and one-half rate of a nurse’s ‘regular rate of pay’ when it results in overtime pursuant to RCW 49.46.130.” CP at 921. The final order correctly clarifies that nurses who missed a rest break resulting in overtime hours are owed 10 minutes at time and one half for a total of 15 minutes of pay, plus 5 minutes of straight time pay pursuant to the CBA. I solely differ with the superior court’s grant of double damages because, considering the lack of authority regarding missed rest periods as hours worked, I would hold this is a bona fide dispute regarding the payment of wages. *Schilling v. Radio Holdings, Inc.*, 136 Wn.2d 152, 160, 961 P.2d 371 (1998).

Because I would affirm the superior court except for double damages, I respectfully dissent.

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Brown, J.