

TAB K

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

In re American Federation of Teachers, et al.,

Petitioners,

v.

Occupational Safety and Health Administration,
et al.,

Respondents.

Case No. ____

DECLARATION OF LINDA ADYE-WHITISH

I, Linda Adye-Whitish, declare as follows:

1. The facts in this declaration are based on my personal knowledge.
2. I am a registered nurse working at a hospital in Pierce County, Washington. I have been a nurse for the past 37 years, specializing in critical care. For the last 10 years, I have worked in the emergency department of the second busiest ER in the state.
3. In the early weeks of COVID-19, we routinely treated patients without having ready access to masks or gowns and had no supply of N95 masks at all. I complained to my manager after a shift where I was assigned two presumed COVID-19 patients, one receiving BiPAP respiratory therapy, and at the same time was assigned a patient undergoing chemotherapy, who was thus immunosuppressed and at high risk if exposed to COVID-19. My manager agreed that our procedures were inadequate, but we continued to have only limited numbers of simple surgical masks until the end of March.
4. I resorted to appealing to my neighborhood community message board to get N95 masks donated from people's earthquake kits and garages, and my dentist donated surgical masks as she was closing her office.
5. Eventually my employer began fit-testing for N95s, but they didn't have one in

my size (extra-small). When they finally obtained an XS mask two weeks later, I was already beginning to develop COVID symptoms. Prior to COVID-19, I had not been fit-tested for an N95 in the eleven years I had worked for my employer.

6. I became symptomatic on March 26, and tested positive on April 1. I had worked each day from March 21-23, and had not been anywhere other than home and the hospital for more than two weeks, aside from a single in-and-out trip to a store to buy necessary supplies. I had been diligent about wiping down all surfaces and taking all possible personal precautions. I am certain that my exposure came from work and I had documented positive exposures at work during that time.

7. I took three weeks of leave to recover, but still have symptoms more than six months later. I frequently have heart palpitations and become short of breath. My sense of taste has improved to approximately 75% and my sense of smell has only recently returned to about 50% of normal. I experience “brain fog” (a feeling similar to having taken sedating medication like Benadryl) several days a week although that is improving.

8. Since I returned to work, I still don't have a suitable N95 mask. We ran out of XS masks, even though we were reusing them for a week or two at a time and storing them in paper bags in our lockers. The current masks are not the brand or type that we fit-tested. In lieu of masks, I can sometimes use a controlled air-purifying respirator (“CAPR”), but those are in short supply as well. We're supposed to have two carts of eight CAPRs for our unit, but we often have only one available. We are reusing the single-use face shields that the CAPRs require and the CAPRs often lack intact hoods or charged batteries and are sometimes left without decontamination. Even gowns are often not readily available and we have to search for a supply.

9. Some of my colleagues in the ER department have tested positive as recently as

September.

10. For the first time in my career I feel expendable and I am thinking of leaving the profession I love. My employer is unwilling or unable to follow known and understood measures for keeping healthcare workers like me safe.

11. Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury under the laws of the United States that the foregoing declaration is true and correct to the best of my knowledge, information, and belief.

Dated: October 25, 2020

/s/ Linda Adye-Whitish
LINDA ADYE-WHITISH, RN, CEN