



New York State Department of Labor
David A. Paterson, Governor
Colleen C. Gardner, Commissioner

June 15, 2010



Re: Request for Opinion
Meal Periods
Public School Teachers
RO-10-0027

Dear [REDACTED]:

This letter is written in response to your letter which this office received on February 17, 2010, in which you request an opinion regarding the applicability of Section 162 of the Labor Law to teachers. Your letter states that you are a teacher in a rural public school in New York which assigns teachers to a lunch period from 10:07 A.M. to 10:37 A.M. In that regard, your letter asks whether Section 3029 of the Education Law supersedes Section 162 of the Labor Law, and whether a public school teacher is entitled to a thirty minute meal period between the hours of eleven o'clock in the morning and two o'clock in the afternoon as provided in Section 162.

As a preliminary matter, it is necessary to determine whether Section 162 of the Labor Law applies to public school teachers. As relevant to your inquiry, Section 162(2) of the New York State Labor Law provides as follows:

2. Every person employed in or in connection with a mercantile or other establishment or occupation coming under the provisions of this chapter shall be allowed at least thirty minutes for the noon day meal, except as in this chapter otherwise provided. The noon day meal period is recognized as extending from eleven o'clock in the morning to two o'clock in the afternoon. An employee who works a shift of more than six hours which extends over the noon day meal period is entitled to at least thirty minutes off within that period for the meal period.

As you can see, subsection 2 of Section 162 of the Labor Law begins with the words "Every person *employed*." [emphasis added] Labor Law §2(7) defines the term "employed" as

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"includes permitted or suffered to work." As public school teachers are persons "permitted or suffered to work," and, therefore, are "employed," they are within the coverage of Section 162. Accordingly, and since neither Article 5 of the Labor Law as a whole nor Section 162 in particular contain express exclusionary language for public employees, it is the opinion of this Department that Section 162 is applicable to public school teachers.

Please note that Sections 201 and 203 of the Civil Service Law provide that the terms and conditions of public employment are subject to collective bargaining. Under certain circumstances, the union may waive the meal period requirements of Section 162 of the Labor Law. In American Broadcasting Companies, Inc. v. Roberts, 61 NY2d 244 (1984), the Court of Appeals held that the provisions of Section 162 of the Labor Law could be waived in a collective bargaining agreement, provided that there was a bona fide agreement to exchange that waiver for a benefit desired by the employees, and provided that such agreement was free from any taint of duress, coercion or bad faith.

With this background in mind, your letter asks whether Section 3029 of the Education Law supersedes the protections contained in Section 162 of the Labor Law. Section 3029 of the New York State Education Law provides:

§3029. Hours of continuous duty for full time teachers

Except in a city having a population of one million or more persons the school authorities of any school district employing two or more teachers shall fix the hours of duty for full time teachers so that no teacher shall be assigned continuous duty for a length of time in excess of five hours. When the daily total hours of duty exceed five, duties must be assigned so as to provide a period of at least thirty minutes in length which shall be free from assigned duties and which shall be scheduled so far as practical during the hours normally allotted for pupils' lunch periods.

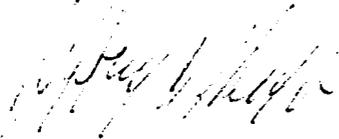
Education Law §3029 does not, of necessity, contradict Section 162 of the Labor Law; rather it expands on the rules governing meal periods for full time teachers. However, it may be at odds with the decision of the Court of Appeals in the *ABC* case discussed above. While that case held that the meal period requirements in Section 162 may be waived through a collective bargaining agreement so long as certain protective standards were met, a brief review of the protections granted by Section 3029 reveals that the right to a duty-free thirty minute lunch period as established thereunder may not be waived during the collective bargaining process. (94 N.Y. Jur. 2d Schools, Universities, and Colleges § 255.) Therefore, even if a valid waiver of Section 162 of the Labor Law is established using the test enunciated in the *ABC* case, teachers may still be entitled to a lunch period that meets the requirement of Education Law §3029. However, you should communicate with the State Education Department in this regard as enforcement of this provision falls outside the Department of Labor's jurisdiction.

With regard to the question of whether your employer's meal period arrangement may be in violation of Section 162 of the Labor Law, your letter does not provide a sufficient basis to

enable us to make a determination in this regard. In order to do so, the Department would need to know the length of your shift, whether it is longer than six hours and extends over the noon day meal period, whether the employer was given flexibility under the collective bargaining agreement to schedule the meal period earlier in the day and outside the time window provided by statute, and whether, if the scheduling of such meal period was covered in the collective bargaining agreement, whether it was in exchange for some other desired benefit. If you have access to this information and wish to receive a more definitive response to your question, please send the information requested above to us. If you believe that the employer's practice is in violation of the requirements in Section 162 of the Labor Law, as they are described in this letter, please do not hesitate to file a complaint with the Department's Division of Labor Standards setting forth such information.

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. This opinion cannot be used in connection with any pending private litigation concerning the issue addressed herein. If you have any further questions, please do not hesitate to contact me.

Very truly yours,
Maria L. Colavito, Counsel

By: 

Jeffrey G. Shapiro
Associate Attorney

cc: Carmine Ruberto

Enclosure: Claim for Unpaid Wages