School Committee of Hanover v. Curry, supra. We cannot conclude that initial salary levels are matters of educational policy and not terms and conditions of employment. Such an interpretation would conflict with the statutory language of Section 2 of the Law.

> Employees shall have the right to self-organization and the right to form, join or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment. (emphasis added)

We therefore follow our decision in Northeast Metropolitan Regional Vocational School Dist. and Northeast Teachers Association, supra, and find that initial wages for newly created positions which are properly included in an existing bargaining unit are "wages" within the meaning of the Law and matters upon which an employee organization has a right to bargain.

This decision does not, however, end this case. The School Committee contends that even if a right to bargain about initial salary levels exists, that the Melrose Teachers Association has waived its right in this instance. The School Committee points to the provisions of the collective bargaining agreement in effect at the time of the creation of the positions and the past practice of unilateral creation of extracurricular positions and initial salary determination.

We have adopted the standard of the National Labor Relations Board in requiring that a waiver of a union's statutory right to bargain be "clear and unmistakable." NLRB v. Perkins Machine Co., 326 F.2d 488, 55 LRRM 2204 (1st Cir. 1964); Town of Natick, 2 MLC 1086 (1975); City of Everett, 2 MLC 1471 (1976). Mere silence on the part of an employee organization is not waiver. Bierl Supply Co., 179 NLRB 741, 72 LRRM 1498, 1499 (1970); Town of Natick, 2 MLC 1086, 1092 (1975). The matter allegedly waived must have been fully explored and consciously yielded before a waiver will be found. The Press Co. and Newspaper Guild, 121 NLRB 976, 42 LRRM 1493 (1958).

In the instant case, a consideration of all the facts points to a waiver by the Association of its right to bargain about the stipends at issue during the term of the existing collective bargaining agreement. First, the collective bargaining agreement specifically states that the School Committee is not obligated to negotiate modifications or additions to the contract to become effective during its term. Under the standards we have adopted, this provision alone would not amount to waiver of the Association's right to bargain about wages for newly created positions. However, because of the opening of a new high school, the parties agreed to a reopener clause in the collective bargaining agreement which by its terms is limited to matters of hours or working conditions. The subject of wages was omitted from the reopener provision. The Association has not contended that this omission was the result of anything but conscious deliberation. Especially when we view these provisions together with the past practice[4] of

[4]The collective bargaining agreement between the parties effective September 1974 covered approximately 80 extracurricular positions. The 20 positions created by the School Committee since 1970 represent one-quarter of all existing positions. This large percentage of positions surely did not go unnoticed by the Association and must reasonably have made it aware that the opening of a new high school may have occasioned additional actions of this nature.

unilateral creation of new extracurricular positions and initial stipends by the School Committee we cannot but conclude that the Association knew that new extracurricular positions could be established at the high school and stipends set for them; that it was fully aware that it had not negotiated a contract provision covering this matter; and that it consciously agreed to limit the reopener clause to preclude wage negotiations during the contract term.

While the Commission will not lightly infer a waiver of a statutory right, it will also not allow parties to lightly escape their duties and responsibilities to abide by the agreements they negotiate.[5]

ORDER

Wherefore, on the basis of the foregoing, it is hereby ordered that this Complaint ought to be and is DISMISSED.

James S. Cooper, Chairman

Madeline H. Miceli, Commissioner

Garry J. Wooters, Commissioner

[5]We note that the School Committee and the Association have successfully negotiated an agreement which includes wages for the Unit Teacher Advisor positions that are the subject of this Complaint. We are confident that they will note our conclusions as to the bargainability of the underlying subject matter and that they will in good faith resolve any future disagreements of this nature.