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MSAD #46 Education Association/ MEA/NEA,)	
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)	
Complainant,)	DECISION AND ORDER
)	ON COMPLAINANT'S MOTION
v.)	FOR REVIEW OF EXECUTIVE
)	DIRECTOR'S SUMMARY DISMISSAL
)	OF COMPLAINT
MSAD #46 Board of Directors,)	
)	
Respondent.)	
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The MSAD #46 Education Association filed its complaint on November 24, 2004, alleging the employer refused to bargain in violation of §964(1)(E) and (A). The MSAD #46 Board of Directors filed its response on December 13, 2004. On December 16, 2004, the Executive Director dismissed the complaint after concluding that the current collective bargaining agreement between the parties included a provision in which the Association had waived its statutory right to bargain during the term of the agreement. The Association appealed the dismissal of its complaint to the Board in accordance with 26 M.R.S.A. §968(5)(B).

At issue is the interplay between two provisions contained in the parties' current collective bargaining agreement. The first is a provision referred to as a zipper clause and the second is an addendum in which the parties agreed to reopen negotiations on certain specified topics. These provisions are:

ARTICLE III GROUND RULES

B. This Agreement incorporates the entire understanding of the parties on all matters which were or could have been the subject of negotiations. During the term of the Agreement, neither party shall be required to negotiate with respect to any such matter whether or not covered by this Agreement and whether or

not within the knowledge or contemplation of either or both of the parties at the time they negotiated or executed this Agreement.

ADDENDUM TO THE MSAD #46 2002-2005 TEACHERS CONTRACT

MSAD #46 Board of Directors and the MSAD #46 Education Association will reopen negotiations of the MSAD #46 2002-2005 Comprehensive Teachers' Contract in November or December of 2002 for the purposes of negotiating salaries, health insurance, zipper clause and hard to fill teaching positions for the second and third years. If agreement is not reached, the normal procedures of impasse by state statute is open to either side.

The Executive Director concluded that the zipper clause constituted a clear and unmistakable waiver of the Association's statutory right to demand bargaining during the term of the contract and that the addendum merely created a contractual obligation. We disagree for the reason stated below.

It is well established that a party can waive its statutory right to demand bargaining during the term of an agreement as long as it does so "by clear and unmistakable language." See State of Maine v. Maine State Employees Association, 499 A.2d 1228, 1230 (Me. 1985); Metropolitan Edison v. NLRB, 460 U.S. 693, 708 (1983); Maine Teachers Assoc./NEA v. State Board of Education, No. 86-14, at 11-12 (Nov. 18, 1986). If it were the only provision on the subject, the zipper clause in the present case would indeed constitute a clear and unmistakable waiver. The addendum, however, by its very terms severely undercuts and casts doubt on any contention that the waiver is "clear and unmistakable." With respect to the subjects listed in the addendum, there is no waiver because the language of the addendum precludes the possibility of concluding that the Association has waived its statutory right "by clear and unmistakable language."

We grant the Association's appeal and instruct the Executive

Director to reinstate the complaint and schedule in accordance with the Board's Rules and Procedures.

Dated at Augusta, Maine, this 3rd day of February, 2005

MAINE LABOR RELATIONS BOARD

/s/ _____
Peter T. Dawson
Neutral Chair

/s/ _____
Karl Dornish, Jr.
Employer Representative

/s/ _____
Robert L. Piccone
Alternate Employee Representative