

**COMMONWEALTH OF PENNSYLVANIA
STATE CHARTER SCHOOL APPEAL BOARD**

In Re: Lincoln-Edison Charter School :
 :
 On Remand from Commonwealth : **Docket No. CAB 2002-3**
 Court :

OPINION ON REMAND

I. Background

The Lincoln-Edison Charter School (“Lincoln-Edison”) appealed the original denial of its charter application by the School District of the City of York (“School District”) to the State Charter School Appeal Board (“CAB”) in May of 2000. On July 28, 2000, CAB granted Lincoln-Edison’s appeal and the Chairman of CAB subsequently signed the charter when the School District failed to do so. Lincoln-Edison commenced operation as a charter school in the School District’s Lincoln Elementary School building (the “Lincoln” building) on August 28, 2000 as a conversion charter school.¹

The School District appealed CAB’s July 28, 2000 decision to Commonwealth Court, Docket No 1886 C.D. 2000. The Court, by Order dated April 30, 2001, vacated CAB’s Order and remanded the case to CAB for a hearing on whether the charter application should be granted on the basis of Lincoln-Edison’s final management agreement with Edison Schools, Inc. (“Edison”).

By Opinion and Order dated July 6, 2001, CAB held that the final management agreement between Lincoln-Edison and Edison satisfied the requirements of the Charter School Law (“CSL”) and continued Lincoln-Edison’s charter. On July 23, 2001, the School District

¹ A conversion charter school is established by converting an existing public school or a portion of an existing public school to a charter school. The applicants for a conversion charter school must show that more than fifty percent of the teaching staff of the public school and more than fifty percent of the parents or guardians of pupils attending the public school have signed a petition in support of the public school becoming a charter school. 24 P.S. §17-1717-A(b).

appealed CAB's July 6, 2001 Opinion and Order to the Commonwealth Court, Docket No. 1710 C.D. 2001.

By Opinion and Order dated May 8, 2002, Commonwealth Court remanded this matter to CAB so that CAB could determine whether Lincoln-Edison proposed adequate lease arrangements for the use of the Lincoln building. CAB was also to determine if Lincoln-Edison was required to pay rent to the School District for use of the Lincoln building, and if so, the amount of rent. On July 30, 2002, a hearing was held before a hearing officer appointed by CAB. In addition, deposition testimony of a witness was taken on August 5, 2002.

These issues were argued before CAB at its March 2003 meeting.² At CAB's July 2003 meeting, CAB voted that Lincoln-Edison had proposed adequate lease arrangements. CAB also voted that Lincoln-Edison must pay rent to the School District for use of the Lincoln building and for use of the School District's personal property being used by Lincoln-Edison. However, CAB believed it did not have sufficient information to determine an appropriate amount of rent and remanded these matters to a hearing officer. The parties were to provide information to the hearing officer to assist in determining an appropriate amount of rent for the building using a cost basis approach, and to determine an appropriate amount of rent for Lincoln-Edison's use of the School District's personal property.

The hearing officer held a hearing on October 15, 2003, and then certified the record to CAB. The parties had informed the hearing officer that the issue of rent for use of the School District's personal property would be resolved by the parties, and therefore, was no longer an issue before CAB. At CAB's October 29, 2003 meeting, the parties provided oral argument to

² Oral argument on these issues was scheduled to be heard by CAB prior to March 2003, but the parties asked that the matters not be argued until new CAB members were appointed and able to hear the oral argument.

support their respective positions regarding an appropriate amount of rent for the use of the building.

At its December 2, 2003 meeting, CAB voted to accept Lincoln-Edison's payment option of an escalating amount of rent. This payment option was identified in Lincoln-Edison's Exhibit F, which was admitted to the record at the October 15 hearing and required a first year's rent of \$266,844.

II. Findings of Fact

1. The CSL requires that charter school applications include a "description of and address of the physical facility in which the charter school will be located and the ownership thereof and any lease arrangements." 24 P.S. §17-1719-A(11).

2. Lincoln-Edison's charter application included information in both the model management agreement and on page 29 of the charter application regarding lease arrangements.

3. The final management agreement did not contain information that was in the model management agreement regarding lease arrangements.³

4. The charter application, at page 29, indicated that the physical facility in which the charter school was to be located was the Lincoln Elementary School, 559 West King Street, York, PA 17404. Since this was an application for a conversion charter, it was known that the School District owned the Lincoln building.

5. Also, on page 29 of the charter application it is further indicated that the Lincoln-Edison budget included "salaries for full-time custodian, facility and grounds maintenance services, custodial supplies, and repair and maintenance."

³ Lincoln-Edison should have retained information in the final Management Agreement that had been in the model Management Agreement regarding lease arrangements even if it did not believe the School District would agree to execute a lease. However, as later discussed, the failure to retain those provisions in the final Management Agreement does not provide grounds to deny Lincoln-Edison a charter because information on page 29 of the charter application regarding lease arrangements meets the requirements of the CSL.

6. Lincoln-Edison has been in operation as a charter school in the Lincoln building since August 28, 2000. (Lincoln's Exhibit A, p. 4).⁴

7. On August 1, 2000, the School District received a proposed lease from Lincoln-Edison. (N.T. at p. 123).⁵

8. Representatives of the School District and Lincoln-Edison met on August 10, 2000 to discuss a lease but were unable to reach an agreement. (N.T. at pp. 34-35, 123-124).

9. On August 28, 2000, representatives of the School District and Lincoln-Edison met again to discuss a lease but were again unable to reach an agreement. (N.T. at pp. 37-39, 134).

10. At the August 28, 2000 meeting, the School District agreed to revise Lincoln-Edison's proposed lease and the School District submitted its revised lease to Lincoln-Edison on November 21, 2000. (N.T. at pp. 37-39, 141 and Respondent's Exhibit B).

11. On December 20, 2000, Lincoln-Edison responded to the School District's revisions by submitting another proposed lease to the School District. (N.T. at pp. 40, 141-42; Lincoln's Exhibit C).

12. By letter dated January 2, 2001, the School District expressed its disagreement with Lincoln-Edison's December 20 proposed lease. (N.T. at pp. 142-43).

13. Lincoln-Edison and the School District submitted their respective proposed leases to the hearing officer on July 30, 2002, for admission into the record. (N.T. at pp. 24, 126; Lincoln's Exhibit J; School District's Exhibit B).

⁴ References to Exhibits are to those presented at the July 30, 2002 hearing before the hearing officer appointed by CAB.

⁵ N.T. refers to Notes of Testimony of the July 30, 2002 hearing before the hearing officer appointed by CAB.

14. Since the opening of the Lincoln-Edison school, the staffs of the School District and Lincoln-Edison have had a cordial relationship and solve problems as they arise. (N.T. at pp. 12, 112, 138).

15. Since the August 28, 2000 meeting, Lincoln-Edison and the School District have resolved the issues of the payment of utilities, the cafeteria and day-to-day maintenance at the Lincoln building. (N.T. at pp. 137).

16. Lincoln-Edison intends to pay all costs for operation of the Lincoln building, including utilities, teacher and staff salaries, maintenance, curriculum and supplies. (Lincoln's Exhibit A).

17. The School District billed Lincoln-Edison \$221,377.45 for operational expenses at the Lincoln building for 2000-2001, and Lincoln-Edison paid the bill. (N.T. at pp. 10, 94).

18. The School District has not sent Lincoln-Edison a bill for operational expenses at the Lincoln building for 2001-2002, but Lincoln-Edison intends to pay the bill when it is received. (N.T. at pp. 10, 94).

19. Lincoln-Edison allowed the School District to use the Lincoln building for training for the School District's boys' track team when it could not train outdoors. Lincoln-Edison was willing to allow one of the School District's basketball teams to use the Lincoln building but the team found another location. (N.T. at pp. 12-13).

20. Pursuant to a ruling by the York County Court of Common Pleas, Lincoln-Edison paid the School District \$75,000 in the fall of 2000. (Lincoln's Exhibit A; N.T. at p. 91).

21. The York County Court of Common Pleas also ordered Lincoln-Edison to post a bond of \$50,000 per month for each month Lincoln-Edison is in possession of the Lincoln building, and Lincoln-Edison has complied. (Lincoln's Exhibit A; N.T. at pp. 122-23).

22. At an October 15, 2003 hearing, the parties presented documents and testimony regarding an appropriate amount of rent for Lincoln-Edison's use of the Lincoln building.

23. Certain items of personal property owned by the School District are in the Lincoln building and are being used by Lincoln-Edison. (N.T. at pp. 19).

24. The School District has not billed Lincoln-Edison for use of the School District's personal property in the Lincoln building and Lincoln-Edison has not made any payments to the School District for use of these items. (N.T. at p. 15).

25. At the October 15, 2003 hearing, the parties stipulated that they would determine the fair rent for use of the School District's personal property. (N.T., Oct. 15, 2003 at pgs. 13-14).⁶

III. Conclusions of Law

1. Lincoln-Edison was required to provide in its charter application "[a] description of and address of the physical facility in which the charter school will be located and the ownership thereof and any lease arrangements." 24 P.S. §1719-A(11).

2. The CSL does not require that an application contain a signed lease for a facility but requires that the facility be identified and the ownership and lease arrangements be described in at least a general way. See, Phoenix Academy Charter School, No. CAB 1999-10.

3. The CSL does not require that a charter applicant provide a proposed lease in its charter application.

4. In its interpretation of Section 1719-A(11), CAB has not required that charter schools provide a proposed lease or detailed information regarding lease arrangements in their charter applications.

⁶ N.T., October 15, 2003, refers to Notes of Testimony of the October 15, 2003 hearing before the hearing officer appointed by CAB.

5. Information provided on page 29 of Lincoln-Edison's charter application was sufficient to meet the requirements of Section 1719-A(11) of the CSL as previously interpreted by CAB, and therefore, granting of a conversion charter to Lincoln-Edison was proper.

6. At the time the School District and CAB reviewed Lincoln-Edison's charter application in 2000, there was no basis to know or believe that a proposed lease was required to be part of the charter application.

7. When the case was remanded back to CAB by the Commonwealth Court's Opinion and Order dated April 30, 2001, there was no basis to know or believe that a proposed lease was required to be part of the charter application, and the remand did not specifically identify that issue as an issue to be determined on remand.

8. Since Lincoln-Edison had no reason to know or believe, when it submitted its charter application, that it needed to provide a proposed lease, Lincoln-Edison cannot be denied a charter by its failure to have a proposed lease in its charter application.⁷

9. The CSL does not specifically address the issue of whether a conversion charter school must pay rent.

10. A conversion charter school is required to pay rent to the school district for use of the school district's building.

11. A conversion charter school must pay the school district for use of any personal property owned by the school district that remains in the school district's building for use by the charter school, such as, but not limited to, desks, furniture, cabinets, and book cases.

⁷ Hereafter, a charter applicant that seeks a conversion charter must provide a proposed lease in its charter application. The school district can negotiate the terms of the proposed lease with the charter applicant. If a lease cannot be agreed upon by the parties and the school district denies the charter based, partly or wholly, on the grounds that the charter applicant did not provide sufficient lease arrangements, CAB will, on appeal, evaluate the lease to determine whether the proposed lease arrangements are sufficient and protect the public interest. Granting of the charter by CAB would finalize the lease terms, and the lease, as part of the application, would become part of the charter.

12. The amount of payment for use of the school district's personal property by the charter school shall be negotiated between the school district and the charter school. If a price cannot be determined through such negotiations, the school district shall remove the property from the building and the charter school shall provide its own property for use in the charter school.

13. The leases submitted to the hearing officer at the July 30, 2002 hearing by Lincoln-Edison and the School District are admitted into the record because neither proposed lease was available, or required to be available, at the time the School District reviewed the charter application.

14. Except for provisions pertaining to the payment of rent for real and personal property, and issues related to the Commonwealth Court cases on appeal, the proposed leases submitted by Lincoln-Edison and the School District do not have significant differences.

15. The proposed lease submitted to the hearing officer by Lincoln-Edison adequately protects the public interest with the changes as set forth below in this opinion.

16. The proposed lease submitted to the hearing officer by Lincoln-Edison, with the changes set forth below, provides acceptable lease arrangements and the lease shall be executed by Lincoln-Edison and the School District and shall become part of the charter.

17. Lincoln-Edison's escalating rent schedule is the appropriate determination of the rent to be paid by Lincoln-Edison to the School District. *See*, Exhibit "A".

IV. Discussion

The Commonwealth Court remanded this case to CAB so that CAB could determine whether Lincoln-Edison proposed adequate lease arrangements for the use of the Lincoln building in order to be entitled to a conversion charter. CAB was also to determine whether

Lincoln-Edison was required to pay rent to the School District for use of the Lincoln building and, if so, the amount of rent.

A. Lease Arrangements

The CSL provides that a charter applicant must provide “[a] description of and address of the physical facility in which the charter school will be located and the ownership thereof and any lease arrangements.” 24 P.S. §17-1719-A(11). The CSL does not explicitly require that a charter applicant provide a proposed lease in its charter application. In reviewing other charter applications, CAB has not interpreted the CSL to require that charter applicants provide a proposed lease or detailed information regarding lease arrangements in their charter applications. CAB has previously held that the CSL does not require that a lease be signed for a facility but that the facility be identified and the ownership and any lease arrangements be described in at least a general way. See, Phoenix Academy Charter School, No. CAB 1999-10.

Lincoln-Edison provides, on page 29 of its charter application, the name and address of the physical facility. Since this was a conversion charter school application, both the School District and CAB knew that the School District was the owner of the building. In addition, under Facility Maintenance on page 29 of the charter application, Lincoln-Edison stated that it had budgeted approximately \$263,813 for “salaries for full-time custodians, facility and grounds maintenance services, custodial supplies, and repair and maintenance.” This information provided by Lincoln-Edison in its charter application was sufficient to meet the requirements of the CSL regarding lease arrangements, as CAB had previously interpreted those requirements. Therefore, Lincoln-Edison was entitled to a conversion charter.

Although the CSL does not explicitly provide that an applicant for a conversion charter must include a proposed lease in its application, CAB holds that hereafter an application for a

conversion charter must include a proposed lease. Section 1719-A(11) of the CSL does not distinguish between a conversion charter and a non-conversion charter regarding the information that is to be included in the charter application about lease arrangements. However, the circumstances surrounding the conversion of a school district building to a charter school dictate that the application contain a proposed lease. When a charter applicant seeking a non-conversion charter identifies in its application the facility in which the charter school will be located, there is a reasonable presumption that there have been discussions with the owner and that a lease can be successfully negotiated. In such circumstances, the charter school applicant and the facility owner would very likely have equal bargaining power to negotiate a lease.

In the case of a conversion charter school, however, the school district is not only the entity that can grant or deny the charter but is also the entity with which the charter school needs to execute a lease for use of the converted building. In this circumstance, if the school district is opposed to its facility being converted to a charter school, it is in a position to deny the charter application and also refuse to negotiate a lease with the charter school. Therefore, the school district has greater leverage in the bargaining process and can either force the charter school into unfavorable terms or deny the charter school a lease.

If a conversion charter school is not required to include a proposed lease in its application and the school district denies the charter, CAB can decide to grant the charter but would not have any involvement in lease negotiations after the charter was granted. This is precisely the situation that occurred in this case – a charter was issued but the parties have not been able to agree to lease terms. By requiring a charter applicant to include a proposed lease in its application for a conversion charter, CAB will have the ability to review the proposed lease if the school district denies the charter, and determine if it sufficiently addresses lease arrangements

and protects the public interest. With a proposed lease in the application, the lease becomes part of the charter if CAB approves the granting of the charter.

Obviously, when a charter applicant includes a proposed lease in its charter application for a conversion charter, the school district can choose to accept the proposed lease or try to negotiate another lease with the charter school. However, if the parties cannot agree upon lease terms, and the school district denies the charter, CAB will be the entity that determines the sufficiency and appropriateness of the proposed lease.

If a distinction is not made between a conversion charter school and a non-conversion charter school for purposes of providing lease arrangements, the situation that has occurred in this case is very likely to repeat itself. Therefore, even though such a distinction is not explicitly stated in the CSL, the circumstances surrounding a conversion charter school regarding lease arrangements support such a distinction and such a distinction can be reasonably inferred from the CSL and its intent. The general legislative intent set forth in the CSL is to provide students and parents with expanded choices for educational opportunities and to encourage different and innovative teaching methods. 24 P.S. §17-1702-A. Allowing a school district to have the power, even after CAB decides that the charter should be granted, to deny the use of its building for a conversion charter school because it will not execute a lease with the charter school does not comply with the intent of the CSL.

In this case, Lincoln-Edison provided the School District with a proposed lease in August 2000. Subsequently, the School District provided Lincoln-Edison with a proposed lease in November 2000. For whatever reason, the parties have been unable to agree to lease terms. Since the CSL and CAB's previous decisions did not require that a proposed lease be part of a charter applicant's application, CAB admits into evidence the proposed leases provided to the

hearing officer by the parties on July 30, 2002. CAB reviewed and compared the parties' proposed leases. Except for provisions pertaining to the payment of rent for real and personal property, and the issues related to Commonwealth Court cases on appeal, the two proposed leases do not differ in significant ways.

With the following modifications, the lease proposed by Lincoln-Edison sufficiently addresses lease issues and adequately protects the public interest:

Section 5.1 – The lease commences on August 28, 2000 and should be modified to end on June 30, 2005, rather than on July 15, 2005.

Section 5.4 shall read as follows: The District may terminate the lease if there are any material breaches of the lease by the Charter School. In addition, a final revocation of the charter (after all appeals that may be filed by the Charter School are exhausted) shall serve to terminate this Lease. In the event of a material breach by the Charter School, the District shall provide written notice of the breach to the Charter School within 30 days of the breach and the Charter School has 30 days to cure the breach. If the Charter School fails to cure the breach within the 30-day cure period, the lease shall terminate and the Charter School shall vacate the building within 20 days of termination. If the Charter School's charter is revoked or terminated after all appeals are exhausted, the Charter School shall vacate the building within 20 days of the revocation or termination, unless however the District and the Charter School agree that it would be in the best interests of the Charter School students to allow the students to complete the school year at the Charter School.

Section 5.5 shall read as follows: Breach by the District. In the event there is a material breach by the District of its obligations under this agreement, the Charter School shall notify the District, in writing, of the breach and give the District 30 days to cure. If the District does not

cure the breach within 30 days, the Charter School may cure the breach and deduct the cost of curing the breach from any payments due from the Charter School to the District. In addition, in the event no payments are due, the Charter School may elect to recover those costs through any legal process.

Section 8.1 – Deleted and replaced by the Escalating Rent Schedule accepted by CAB as the amount of rent payments to be paid by the Charter School to the District. The rent payments shall be made on a monthly basis, paid in advance and due and payable on the 1st day of each month with any partial months being prorated accordingly.

Section 8.2 – Deleted.

The lease proposed by Lincoln-Edison, as modified above, shall be executed by Lincoln-Edison and the School District and shall become a part of the charter issued to Lincoln-Edison.

B. Rent for real property

There are no provisions in the CSL that explicitly prohibit a school district from charging rent for the use of a building it owns but that has been converted to a charter school. 24 P.S. §17-1701-A *et seq.* There are no provisions in the CSL that explicitly require a charter school to pay rent for the use of a building owned by a school district that is converted into a charter school. 24 P.S. §17-1701-A *et seq.*

Because the CSL lacks explicit prohibitions against charging rent for a conversion charter school and lacks explicit requirements that the charter school pay rent for the conversion charter school, CAB must review the totality of the CSL and its intent. After such review, and for the following reasons, CAB has determined that a conversion charter school must pay rent to the school district for use of the school district's converted building.

A non-conversion charter school must locate a suitable property in which to house its school, and must pay rent required by the owner of the property. Obviously, the rent paid by a non-conversion charter school is part of the school's operating costs. If a conversion charter school were not required to pay rent for use of the converted school district building, a conversion charter school's operating costs would presumably be significantly less than those of non-conversion charter schools. The CSL does not prohibit a school district from charging rent to a conversion charter school, and there is no reasonable basis why a conversion charter school should be treated differently than a non-conversion charter school for this purpose.⁸ Thus, CAB holds that Lincoln-Edison must pay rent to the School District for use of the Lincoln building.

At its July 14, 2003 meeting, CAB voted to remand the case to a hearing officer in order for the parties to provide information regarding the amount of rent to be paid for use of the Lincoln building by using a cost basis approach. CAB further suggested that there were two methodologies under which it might consider costs. One methodology would be to determine the original cost of the building and add to that figure the amount needed to amortize a bond issue to pay for the building. The second methodology would be to consider the initial investment in the building and then to add the amount of depreciation determined by an appropriate life plus an interest payment for the undepreciated balance. (Transcript, July 14, 2003 CAB Meeting, pgs. 9-10).

The parties presented documentation and testimony at the October 15, 2003 hearing regarding this issue. The School District presented testimony from Dr. Mitten, the Assistant

⁸ Obviously, CAB's position that there is not a reasonable basis to make a distinction between a non-conversion and a conversion charter school for purposes of the payment of rent differs from CAB's position regarding a distinction between a non-conversion and a conversion charter school for purposes of providing a lease in the application. For the reasons identified previously in the body of this decision, CAB believes that even though it has not required a non-conversion charter school to provide a lease in its application, it is reasonable for CAB to decide that a conversion charter school must provide a lease in its application. However, such a distinction is not reasonable for purposes of paying rent for use of the building in which the charter school is located.

Superintendent for Operations and Technology. Dr. Mitten testified about the bond issues for the Lincoln building and the refinancing of the bonds. (N.T., October 15, 2003, pgs. 16-20). Dr. Mitten also testified about the reimbursement the School District receives from the Commonwealth of Pennsylvania for the bonds, and that the Commonwealth would expect to be reimbursed part of the lease funds that would be paid to the School District by Lincoln-Edison for lease of the Lincoln building. (N.T., October 15, 2003, pgs. 25-26). Noting that the main purpose of the hearing was to determine what rent should be paid to the School District, the hearing officer asked Dr. Mitten if he had a rent in mind that he was expecting to receive. Dr. Mitten testified that he did not. (N.T., October 15, 2003, p. 41).

Lincoln-Edison presented testimony from the Director of Finance and Operations for the Reading School District, Mr. Schoch. Mr. Schoch testified that he looked at the two different methodologies proposed by CAB. Mr. Schoch expressed some reservations about both methodologies, and therefore, proposed a hybrid of the two methods by taking what he believed to be the appropriate concepts from each. (N.T., October 15, 2003, pgs. 45-48). Mr. Schoch used 50 years as the life of the building and ran payments similar to the way a bond issue is done. He used the total cost of the Lincoln building project - \$9,825,391 – and deducted \$340,884, which was the cost of movable fixtures and equipment and associated architects' fees. This resulted in a total amount for the basis of his calculations of \$9,484,412. After Mr. Schoch determined the life expectancy of the building and the term of the repayment at 50 years, he selected an interest rate of 4.5%. He then calculated a payment schedule in two ways – one constituting level payments and one constituting escalating payments. (N.T., October 15, 2003, pgs. 50-52). Mr. Schoch explained that the escalating payment was based on the concept that rents normally increase over time. Because payments to a charter school would increase over

time, the escalating method allows the charter school to have its rent payments also increase over time so that a higher rent payment in the future would be more affordable than in the early start-up years. (N.T., October 15, 2003, p. 50).

Based on the information provided by the parties, CAB believes that Lincoln-Edison's escalating rent schedule is the appropriate determination of the rent to be paid by Lincoln-Edison. A copy of the escalating rent schedule is attached as Exhibit "A".

C. Rent for personal property

The CSL does not explicitly prohibit or authorize a school district to charge rent to a conversion charter school for the use of personal property owned by the school district. If a public school is converted to a charter school that does not mean that all the personal property in the building is converted to the charter school's ownership. The district can no longer use the building for providing educational services to district students enrolled in its schools. However, this does not mean the district cannot remove the personal property for use in other district buildings, if necessary. However, if a conversion charter school decides it wants to use personal property owned by the district, and the district wants to allow such use, the charter school can negotiate a rental charge with the district. If agreement on a rental amount cannot be reached, the charter school can purchase its own equipment or lease equipment through another entity, and the school district can remove the personal property from that building.

Since there is some personal property owned by the School District that has been, and continues to be, used by Lincoln-Edison, there was to be a determination of a fair and reasonable rate to be charged for the use of this property. During the October 15, 2003 hearing, the parties told the hearing officer that they had stipulated that they would determine the appropriate amount of rent for the use of the School District's personal property. (N.T., October 15, 2003, pgs. 13-

14). Therefore, CAB does not render an opinion about the appropriate amount of rent for the use of the School District's personal property by Lincoln-Edison.

ORDER

AND NOW, this 4th day of May, 2004, based upon the foregoing and the vote of this Board,⁹

(1) Lincoln-Edison proposed adequate lease arrangements, and the lease proposed by Lincoln-Edison, as modified herein, is accepted as the lease between Lincoln-Edison and the School District and must be signed by the parties within 10 days and becomes part of the charter issued to Lincoln-Edison; and

(2) the School District is authorized to charge rent for use of the Lincoln building by Lincoln-Edison based on the escalating rent schedule presented by Lincoln-Edison¹⁰; and

(3) the School District is authorized to charge rent for use of personal property owned by the School District and used by Lincoln-Edison, and the parties stipulated at the October 15, 2003 hearing that they would determine the appropriate amount of such rent.

For the State Charter School Appeal Board

/s/
Vicki L. Phillips
Chairperson

⁹ At the Board's July 14, 2003 meeting, members Bunn, Giorno, Melnick, Reeves, Salinger, Shipula and Phillips voted 7-0; (1) that Lincoln-Edison had proposed adequate lease arrangements; (2) that Lincoln-Edison must pay rent to the School District for use of the Lincoln building; (3) that Lincoln-Edison must pay rent to the School District for use of the School District's personal property; (4) that the matter of rent for the building be remanded to a hearing officer to obtain information to assist in determining the appropriate amount of rent by using a cost basis approach; and, (5) that the matter of rent for the use of the School District's personal property be remanded to a hearing officer to obtain information to assist in determining the appropriate amount of rent for use of the School District's personal property.

¹⁰ At the Board's December 2, 2003 meeting, members Bunn, Giorno, Reeves, Shipula and Phillips voted 5-0 that the escalating rent schedule proposed by Lincoln-Edison at the October 15, 2003 hearing was the appropriate amount of rent to be charged to Lincoln-Edison for use of the Lincoln building.