State of Orhio

State Employment Relations Board

In the Matter of Fact Finding	:	SERB Case Number: 11-MED-08-1077
Between:	:	
City of Marietta, Marietta, Ohio Employer	:	Date of Hearing: January 27, 2012 Date of Report: February 10, 2012
And:	:	
International Association of Firefighters, Local No. 442 Union	:	Felicia Bernardini, Fact Finder

Fact Finder Report and Recommendation

Appearances:

For Marietta, Ohio

Patrick J. Schmitz, Esq. Scott, Scriven & Wahoff LLP, Fact Finding Spokesperson
Jonathan Hupp, Safety Service Director, City of Marietta

For International Association of Firefighters, Local No. 442

Stanley J. Okusewsky III, Esq., Green Haines Sgambati, Co., LPA, Fact Finding Spokesperson
Bruce Weckbacher, Unit Member
Eric Moore, Unit Member
Richard Stewart, Unit Member
Dave Lenington, Unit Member
Pat Molden, Unit Member
Kyle Talbott, Unit Member

Introduction

Case Background

Felicia Bernardini was appointed to serve as Fact Finder in the above referenced case by the State Employment Relations Board (SERB) on December 7, 2011 in compliance with Ohio Revised Code (ORC) Section 4117.14C(3). The case concerns a fact finding proceeding between the City of Marietta (hereafter referred to as the "Employer" or the "City") and the International Association of Firefighters, Local No. 442 (hereafter referred to as the "Union" or "IAFF"). The City of Marietta is situated at the confluence of the Muskingham and Ohio Rivers, and is the county seat of Washington County. Marietta's population is 14,085.[1] The City's residents are served by a professional fire department consisting of 33 bargaining unit members (i.e., 3 Captains, 3 Lieutenants, 1 Fire Inspector, 26 Firefighters/EMTs), a Chief, and a clerk.

Prior to the hearing, the parties engaged in contract negotiations on several dates in the Fall of 201l. However, the State and City political landscapes took their respective tolls on negotiations. Statewide ballot Issue 2 created doubt about the future of public sector collective bargaining in Ohio; and locally, elections for Mayor and city council introduced a further dynamic of uncertainty. Against this backdrop, negotiations were strained and unproductive. With new officeholders waiting in the wings the parties acknowledged that impasse had been reached when they exchanged proposals on December 6, 2011, their final bargaining session. The current contract expired on October 31, 2011.

An initial contact between the Fact Finder and the parties on December 13, 2011 led to two dates being set, one for mediation on January 13, 2012 and a contingent date for a hearing on January 27, 2012. Based on these dates, a time extension was filed with SERB. The Fact Finder met with the parties for mediation as scheduled on Friday, January 13. Alas, no settlement was achieved. On that day, only one tentative agreement (TA) was reached: Article 34, Residency. The parties prepared to move forward with the fact finding hearing scheduled for January 27. Both parties timely filed the required pre-hearing statements.

Patrick J. Schmitz, Esq. represented the Employer.

Stanley J. Okusewsky III, Esq., represented the Union.

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[1] Ohio 2010 Census Population for Cities and Villages, Ohio Department of Development

Issues

Prior to the hearing, the Union withdrew proposals concerning pension pick-up, education leave, and health and safety. The remaining open issues addressed by both parties at the hearing are as follows:

Article 14: Pay Scale

Article 21: Injury Leave

Article 25: Insurance

Article 42: Duration (effective dates only)

Positions, Discussion and Recommendations

At the hearing the parties agreed to present the core economic issues of pay and health care insurance together. The Union's proposal on Injury Leave was addressed separately. The format of this report generally follows that same structure. The report addresses wages and insurance, followed by Injury Leave, followed by a brief comment on the effective dates of the new contract. On each issue, the positions of the parties are briefly summarized, followed by an analysis and discussion. The Fact Finder's specific recommendation on each issue follows the analysis and discussion.

In analyzing the positions of the parties and making recommendations, the Fact Finder is guided by available, relevant evidence and the criteria set forth in ORC 4117.14(G)(7)(a) to (f):

(a). Past collective bargaining agreements, if any between the parties;

(b). Comparison of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

(c). The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;

(d). The lawful authority of the public employer;

(e). Any stipulations of the parties;

(f). Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

1. Article 14: Pay Scale and Article 25: Insurance

Union Position

The Union seeks increases in base salary of:

0% in the first year of the contract,

4% in the second year of the contract, and

4% in the third year of the contract.

The Union also seeks an uninterrupted continuation of step and longevity increases throughout the term of the contract. As for health insurance, the Union seeks continuation of the current benefit package covering medical, prescription drug, dental and vision benefits, and proposes that employees pay $50 per pay toward the total cost of the insurance premium.

It is the Union's position that, despite claims to the contrary, the City can indeed afford wage increases for its unit members. Its insurance proposal is an acknowledgement that benefits fully-paid by the Employer are a lightning rod for taxpayer opposition and therefore no longer tenable. Together the Union's proposals in these two core economic provisions recognizes the City's interests in curbing expenditures and addressing taxpayer concerns, while at the same time providing unit members with a modest financial gain over the three-year life of the contract.

The Union has laid out a ten-year history showing the City's projected General Fund balances in comparison to actual Fund balances. The consistent pattern over these ten years (and perhaps longer) has been for the City to project a dire financial shortfall in each year, only to have actual revenue far exceed its projection. The pattern has held true in each of the last ten years with the exception of 2004, a year in which the City of Marietta experienced its worst flood in forty years. As recently as September 2011 when negotiations opened on this very contract, the City was projecting a year-end shortfall of $1.3 million. With budget figures provided by city administrators projecting a General Fund deficit, the Union shaped its proposals accordingly and reduced expectations for a pay increase in the first year of the new contract. As has so often been the case, when actual budget figures became available in December 2011 and January 2012, the City's projected deficit not only failed to materialize, but dramatically turned into a $2 million carry-over into 2012. In 2007, when this unit last went to fact finding, the eminent Dr. Harry Graham served the parties as Fact Finder and concluded, as a point of fact, that the City of Marietta has a history of underestimating its resources thereby weakening its "inability to pay" argument. Despite this history, when approached by the City late in 2010 and asked to forgo negotiated raises due to a projected budgetary shortfall, the IAFF complied and delayed its raise for the last two months of 2010 and the first two months of 2011. Ultimately, as usual, the projections were wrong and the City implemented the IAFF's raises retroactive to the start of 2011.

The Union also points out that the City does not readily pursue avenues for additional funding to help shore up the City's finances. Many suggestions are made to city officials that would provide hundreds of thousands of dollars in revenue to the City, yet the suggestions are often not acted upon or only adopted reluctantly. For example, both former Chief Dempsey and current Chief Durham have recommended hiring an additional firefighter. Doing so is estimated by the Union to create a net savings to the department of over $100,000 as a result of decreased overtime.

For comparables, the Union offers Athens, Cambridge, Chillicothe, Portsmouth and Zanesville. Among these, only firefighters in Chillicothe provide EMS services as do Marietta firefighters. In this comparison group, Marietta's firefighter wages are in the middle of the comparison group. In direct comparison to Chillicothe (a benchmark for similarity in duties) a top paid Marietta firefighter annually earns about $4500 less than a top paid Chillicothe firefighter. As for health insurance, among these jurisdictions, all but Marietta currently have an employee contribution to their insurance premium. The contribution ranges from a low of $69 per month to a high of $300 a month. For Marietta, the Union's proposal is $50 per pay – the equivalent of $100 per month.

Employer Position

The Employer offers the following pay proposal during the term of the contract.

2012 a wage freeze at 2011 hourly rates, no step increases and no longevity increases,

2013 a wage and health insurance reopener, and

2014 a wage and health insurance reopener.

For health insurance, the City plans to continue the current benefit package and seeks a premium cost sharing arrangement of 85% employer share and 15% employee share throughout the three year term of the contract.

The Employer argues that the City's current financial situation does not support pay raises for city employees. The area's economic indicators have not returned to pre-recession levels. The City has 7.2% unemployment, 23.9% of the City's residents live in poverty, median household income has decreased slightly in the past 10 years, and the population of Marietta has declined by 3% in the last ten years. All of these economic indicators translate to shrinking city revenue. Other major employers in the City, including Marietta City Schools, Marietta College and Marietta Memorial Hospital have frozen wages for many, if not all, employees in 2012. In addition, The Ohio General Assembly has reduced the amount of state tax revenue credited to the Local Government Fund by 25% for 2012, and 50% in 2013 and beyond. Estate tax, a tax that provided anywhere from $260,000 - $560,000 in each of the last seven years, has been eliminated. Since 2007, the City's revenue has struggled to keep pace with expenditures. In 2008 and 2009 expenditures actually exceeded revenue and the City has been forced to plug budget holes by using one-time funds, inter-fund transfers, and fund carryovers.

The City requires a $1.2 million General Fund balance carryover from year-to-year in order to maintain adequate cash flow for normal operations and as a hedge against emergencies. The City's budget projection (modeled on the Employer's proposal) shows that by 2013 the General Fund carryover would be under $1 million, and in 2014 there would be no carryover at all because the Fund would end the year at a deficit.

The City offers an expanded comparison group as comparables for the Fact Finder to consider. The list includes the cities on the Union's list and adds seven others (i.e., Circleville, Coshocton, Ironton, Lancaster, Logan, New Philadelphia, and Steubenville). In the Employer's cohort of 13 cities, Marietta's wages are above average. As for health insurance contributions in this group of comparison cities, none but Marietta have a fully employer-paid benefit. In cities where employees contribute a percentage to their health insurance premium, the percentage varies from 12% - 20%. In cities where employees pay a fixed dollar amount toward their health insurance premium, the dollar amount appears to be equal to approximately 10% or more of the costs. As a comparison benchmark within the City of Marietta, the Employer points to the recently settled 3-year contract with the FOP in which wages are frozen and unit members pay 15% of their health insurance premium.

Finally, on core economic issues, the City points out that during the recent years of deep recession, 2008-2009, when the City's expenses exceeded its revenues, this unit enjoyed 3% raises in each year and did not face layoffs, as was the case in so many other cities. The City's intention with this contract is to rebalance the scales and live within its means.

Discussion

There is no denying that the Great Recession of 2008 and 2009 has taken a toll on Ohio's economy. All quadrants of the State and all sectors of the economy have suffered. Southeast Ohio and the City of Marietta are no exception. The State's budget woes have trickled down to local government leading to a sharp reduction in state tax revenue credited to the Local Government Fund. That reduction is compounded by the State's elimination of the estate tax. Statewide high unemployment during the recession, coupled with a steep drop in property values has led to three steady years of declining revenue in 2008, 2009 and 2010. During this same period, elected officials and public employees faced an unprecedented negative backlash from taxpayers who wrongly interpreted the lag time between the private sector recession (2008-2009) and the onset of the public sector recession (2010) as some type of "public sector immunity" from the country's economic realities; an immunity enjoyed at the expense of private sector workers. In the City of Marietta, during these difficult years of economic recession, the city firefighters did in fact enjoy three straight years of 3% pay raises and fully employer-paid health insurance – a stark contrast to the economic reality of the time.

But what of the current economic indicators and the challenge of planning for the near future? Unemployment in Washington County has steadily decreased over the last three years from an annual average of 9.3% in 2009, to 9.1% in 2010, to 8.3% in 2011.[2] The unemployment rate in the Marietta metropolitan area ended the year at 7.2%, lower than the County's rate.[3] While still high, this shows a positive trend. Marietta income tax collection decreased for three straight years from its high in 2007; however collections rebounded in 2011 to a level higher than that of 2007.[4] No doubt, this strong showing in income tax revenue has something to do with the $2 million carryover in the City's General Fund. Nationally, after two consecutive years of negative gross domestic product indices (GDP) in 2008 and 2009, GDP increased by 3.0% in 2010 and by 1.7% in 2011.[5] Many economists cautiously view this as an indication of weak but steady economic recovery. Annual inflation (a double-edged sword for the economy) fueled by consumer spending was 3.16% in 2011 as compared with 1.64% in 2010 and -.34% in 2009.[6] What is an employer to do with such a mixed bag of indicators? Under such circumstances it seems no elected official or appointed administrator could be faulted for taking a conservative budgetary posture. In Marietta, city representatives have taken these economic uncertainties to mean they have an "inability to pay" and therefore must seek a wage freeze in 2012 paired with an invitation to employees to return to the bargaining table should the economic outlook improve in 2013 or 2014.

There is however, a nagging concern for this Fact Finder – the City's consistent pattern of underestimating its resources. When does prudent, low-risk financial modeling go too far and simply

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[2] Ohio Department of Job and Family Services, Bureau of Ohio Labor Market Information, Unemployment Reports, www.ohiolmi.com

[3] U.S. Department of Labor, Bureau of Labor Statistics, Unemployment Tables, Local Area Unemployment Statistics, www.bls.gov

[4] Union exhibit F, page 2, Marietta Income Tax Collection History, Valerie Holley – City Treasurer

[5] U.S. Department of Commerce, Bureau of Economic Analysis, www.bea.gov

[6] U.S. Department of Labor, Bureau of Labor Statistics, CPI-U Tables, www.bls.gov

become inaccurate and unhelpful to a municipality's planning process? This concern has led the Fact Finder to look quite closely at the budget information prepared by the City. Employer Exhibit Tab 1L, page 7 is a General Fund spreadsheet that provides actual budget figures for 2005-2011 and projections for 2012-2014. The projected years assume the Employer's proposed 2012 wage freeze and a 15% health insurance contribution from employees in 2012, 2013, and 2014. The spreadsheet projects that the General Fund will have a negative balance by 2014 – thus the conclusion that the City cannot afford pay raises.

The Employer's revenue projections for 2012-2014, a key factor in the budget model, assume that city income tax will decline by 1.7% in 2012, 2.7% in 2013, and 1.9% in 2014. The projection also assumes that Hotel/Motel Tax will decline by 7.4% ($20,000) in 2012, and remain at this lower level in 2013 and 2014. During the fact finding hearing, no basis for either assumption was offered. Presumably, these gloomy assumptions simply reflect the fiscally conservative posture of the City's representatives. If one simply changes the income tax projection to a flat projection (not growth, just stagnant) over the next three years rather than a negative projection, the General Fund gains $343,247.00 in revenue which pulls the 2014 fund carryover into the positive rather than the negative. If the Hotel/Motel Tax is assumed to remain flat at current levels rather than declining, an additional $60,000 in revenue is generated. Flat projections (rather than negative projections) in either, or both, of these two revenue items are not out of the question given the current economic indicators for the region. Alternatively, and perhaps more optimistically, if one assumes the economy will grow at a modest 2% (as it has recently), income tax revenue alone could be expected to grow by $688,659.00 by 2014.

On the expense side of the equation, the City's budget spreadsheet projects increases of only 0.5% in 2012 (presumably based on a city-wide wage freeze and the introduction of employee health insurance contributions), followed by a 2.7% increase in 2013 and a 1.15% increase in 2014. Again, no explanation of the underlying assumptions regarding expenditure projections was provided to the Fact Finder during the hearing. Assuming a declining rate of inflation from 2013 to 2014 (as shown on the City's spreadsheet) is not a particularly conservative assumption, nor does it reflect the current trend in inflation, which has averaged 2.5% over the last two years and could reasonably be projected at that average rate going forward. Holding the City's overall inflation in expenses to 2.5% appears to be possible even with 5% inflation in health care premiums. When one uses somewhat different (yet still fiscally conservative) assumptions for both revenue and expenses it is possible to imagine a small wage settlement for this bargaining unit.

In order for budget projections to be useful for planning purposes they must be accurate. All budget professionals revise their projections quarterly as actual revenue is receipted into the Treasury. The mark of an effective budget professional is a track record of minimal variance between projected and actual figures. To be accurate, budget projections must be based on both actual experience and general economic trends, all of which can be hedged with a conservative perspective. In this case, the Fact Finder is reluctant to put much faith in the City's budget projections based on historic inaccuracy and current questionable data.

At hearing, much was made by the Union of the City's need for a $1.2 million fund carryover from year-to-year. To the Fact Finder this debate is symptomatic of the overall concern as to whether the City's budget projections are fair and accurate. The City must enter each new year with adequate operating capital to meet its obligations. Inflating the target carryover as a hedge against unforeseen circumstances is a prudent thing to do. One approach for doing that is to calculate the difference between the highest monthly expense figure and the lowest monthly revenue figure. If that puts the target carryover at $1.2 million, so be it. The real question for these parties is whether the underlying budget figures used to derive the carryover are reliable.

The Fact Finder also notes that a third of this bargaining unit is funded by a fire levy, not the General Fund. This too then, is a moderating factor when calculating the impact of a wage settlement on the General Fund.

In addition to ability to pay factors, a Fact Finder must consider how similarly situated employees are being treated in the market place and/or by the same Employer. To this end, comparables are selected and presented by the parties. In the contract at issue, the Union is not seeking a market adjustment to improve its relative position in comparison with other firefighter units. The Union's proposal is a straightforward cost of living adjustment in the second and third years of the contract. Likewise, the Employer is not focused on the relative market position of Marietta firefighters, but rather seeks to compare general wage increase data across multiple jurisdictions. From the data presented by the parties, it appears that Marietta firefighters are earning a wage that is mid-range whether compared to the expansive list of comparable cities presented by the Employer, or the shorter list presented by the Union. This is apparently the result of a market adjustment made in a prior contract. Since that market adjustment, the Union has maintained its relative position in the market by negotiating regular 3% annual wage increases. From 2008-2010 the unit's 3% wage increases were both above inflation and above average for firefighters in comparable municipalities. SERB records show that in 2010 (the most recent annual data available) wage increases in Southeast Ohio across all types of jurisdictions averaged 1.23% and wage increases for firefighters statewide averaged 1.74%.

As for health insurance, there is no need to belabor that the trend is away from fully employer-paid benefits to cost-sharing arrangements. In the post-SB5 world, 15% employee contributions to health care costs is a benchmark that resonates with both labor and management, as well as with the public at-large. The SERB 2011, 19th Annual Report on the Cost of Health Insurance in Ohio's Public Sector, is based on 2010 data and documents that average employee contributions to single and family premiums are approaching 15%. In large jurisdictions (e.g., State of Ohio, counties, townships with a population over 30,000) average employee contributions already exceed 15%. In Marietta, the IAFF recognizes the inevitability of cost sharing and has proposed a dollar amount that is close to 10% of the 2012 annual premium. The Employer has proposed that the Union pay 15% of the annual premium in each of the three years of the contract. The annual premium is already known for the coming three years, therefore the employee share is easily calculated.

	2012	2013	2014
Annual Premium	$ 14,186.00	$ 14,886.00	$ 15,943.00
15% Annual Employee Share	$ 2,127.90	$ 2,232.90	$ 2,391.45
15% Monthly Employee Share	$ 177.33	$ 186.08	$ 199.29
10% Annual Employee Share	$ 1,418.60	$ 1,488.60	$ 1,594.30
10% Monthly Employee Share	$ 118.22	$ 124.05	$ 132.86

Based on the comparables provided by the parties, regardless of whether the firefighter's share is set at 10% or 15%, the monthly dollar amount will be neither the highest nor the lowest among the City's peer group. Given the rising costs of health care, the statewide trend toward employee co-shares of 15% or higher, and benchmarking with the City's peer group of municipalities in Southeast Ohio it is reasonable to expect Marietta firefighters to pay 15% of their health care premium. The only remaining question is whether they move to that level of contribution gradually over the 3-year term of the agreement, or in one fell swoop for all three years of the agreement. It is worth noting that the Marietta FOP unit is already paying the 15% employee share.

Recommendation

Based on the bargaining history of the parties which calls into serious question the City's claim of its inability to pay, and data on recent wage settlements in comparable municipalities, firefighter units, and throughout the region, the Fact Finder recommends the following settlement in the core economic provisions of wages and health insurance.

Article 14: Pay Scales

0% effective 11/01/11.

2% effective 11/01/12.

2.5% effective 11/01/13.

Steps in the pay scales to operate in accordance with current language throughout the term of the contract.

Article 16: Longevity Pay

Longevity to operate in accordance with current language throughout the term of the contract.

Article 25: Insurance

Section 2: Health Insurance

A. The City shall pay 85% of the premium costs to provide Core Key II Medical Benefits, $10/$20 Prescription Drug, Dental & Optical Plan I Benefits under the YDN-NN Benefit Plan through the Michigan Conference of Teamsters Welfare Fund, as more fully described in Appendix C that is attached to this Agreement. The enrolled unit member shall pay 15% of the premium costs in each year of the contract capped at the following levels.
2012 employee share capped at $178 per month.
2013 employee share capped at $187 per month.
2014 employee share capped at $200 per month.

(The parties may wish to modify the dates to reflect actual benefit years)

2. Article 21: Injury Leave

Union Position

The Union seeks to increase the length of the injury leave from the current language providing for 10 shifts, or the equivalent of 30 calendar days, to 180 calendar days. The Union also seeks language changes to clarify how pay and benefits, and FMLA are handled for a unit member on injury leave. Specifically, the Union's proposal would protect the injured worker from loss of any benefits during the 180 day period and would specify that FMLA starts after other leaves are used.

The Union argues that the type of provision it is proposing is typical of other fire and safety forces and has provided samples of language from other contracts for the Fact Finders' review. It is the

Union's opinion that most injuries that occur on duty will be fully resolved within the 180 day period and that by providing this benefit, an injured worker will not come under undue financial pressure to return to work before returning to full fitness.

Employer Position

The City opposes the Union's proposed changes and seeks to maintain current language. It is the City's position that the benefit, as currently defined in the agreement, is a reasonably generous benefit and to increase it would work against the Employer's interests by perhaps deterring an injured worker from making a prompt return to work.

Discussion

No data was presented by the Union to support its claim that the benefit, as it currently exists, creates an undue hardship on injured workers. In order to fully support a change in a benefit level or a language change designed to improve the administration of a contract provision, it is incumbent upon the moving party to provide historical data that both illuminates the current condition requiring change/improvement and how the proposal remedies the condition. Without this information the Fact Finder is unable to determine the potential costs of the proposal or the operational impact for the Employer. The contract language samples from other jurisdictions provided for comparison purposes, are each unique in benefit level and operational features. It is impossible to know what circumstances in each of those jurisdictions underlies the language or what tradeoffs where part of their negotiated history. In this case, the Union's proposal is a substantial change and is a matter for the parties to negotiate, not something for a Fact Finder to impose. A negotiated provision would allow the parties to fully explore the administrative, operational and budgetary impact of the benefit.

Recommendation

In deference to the bargaining history of the parties the Fact Finder agrees with the Employer's position and recommends **current contract language.**

3. Article 42: Duration

Union Position

The Union proposes that the term of the new contract abut the prior contract. Specifically they propose that the effective dates of the agreement be November 1, 2011 through October 31, 2014.

Employer Position

The Employer proposes that the effective date of the new contract be prospective, running from January 1, 2012 through December 31, 2014.

Discussion

Both parties have proposed no increase in base wages in the first year of the contract and the Fact Finder has adopted that recommendation from the parties. Therefore, the wage provision of this recommendation is not impacted by whether the contract dates are prospective or retroactive. However, the Fact Finder is concerned with possible unintended consequences of changing the long-standing effective dates. A gap of two months could bring into question the status of continuing benefits or alter the effectiveness of implementation dates buried within the contract, such as in the longevity provision.

Recommendation

In deference to the bargaining history of the parties, the Fact Finder agrees with the Union and recommends that the parties **abut their contract effective dates** and remain on their historic negotiating cycle.

Conclusion

In this report I have attempted to make reasonable recommendations that both parties will find acceptable. If errors are discovered or if the parties believe they can improve upon the recommendations, the parties by mutual agreement may adopt alternative language.

After giving due consideration to the positions and arguments of the parties and to the criteria enumerated in ORC 4117.14(G)(7)(a) to (f) the Fact Finder recommends the provisions as enumerated herein. In addition, all tentative agreements (TAs) previously reached by the parties along with all sections of the current Agreement not negotiated and/or changed, are incorporated by reference into this Fact Finding Report and should be included in the resulting collective bargaining agreement.

Respectfully submitted and issued at Columbus, Ohio this 10th day of February 2012.

Felicia Bernardini,
Fact Finder

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of this Fact Finder Report was sent by e-mail and First Class USPS Mail on February 10, 2012 to:

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