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WISCONSIN EMPLOYMENT RELATIONS COMMISSION  
BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

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In the Matter of the Interest  
Arbitration Between

KENOSHA COUNTY DEPUTY  
SHERIFF'S ASSOCIATION

and

KENOSHA COUNTY  
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Case No. 92  
No. 39235  
MIA-1243  
Decision No. 25485-A

APPEARANCES:

Vanden Heuvel & Dineen Law Firm, by MS. LINDA S. VANDEN HEUVEL, for the Union.

Kenosha County Office of Corporation Counsel, by MR. FRANK VOLPINTESTA and Mulcahy & Wherry, S.C., by MR. MARK L. OLSON, for the County.

BACKGROUND

On August 3, 1988, the Union filed a petition with the Wisconsin Employment Relations Commission requesting the initiation of final and binding arbitration pursuant to Section 111.77(3) of the Municipal Employment Relations Act. The undersigned was subsequently appointed to serve as arbitrator to resolve the impasse existing between the parties with respect to wages, hours and conditions of employment of law enforcement personnel for the years 1988 and 1989 pursuant to Section 111.77(4)(b) of the Municipal Employment Relations Act by Order dated July 28, 1988. A hearing was thereafter held on October 24, 1988. The parties were present and were afforded opportunity to present written and oral evidence and to make such arguments as they deemed pertinent. Briefs and reply briefs were thereafter submitted and exchanged through the arbitrator.

THE FINAL OFFERS

UNION FINAL OFFER:

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1. Wages:

1988            3.0%  
1989            Wage Freeze

2. Create Section 3.4 to read as follows:

"Section 3.4. Representation during negotiation.

A. Union. The Union shall be represented in all such bargaining or negotiations with the County by such representatives as the Union shall designate, subject to the following:

Three (3) members of the Bargaining Unit will be provided necessary time off with pay to attend meetings for the negotiation of this contract. However, no more than two (2) members of the Bargaining Unit from any Unit or Division may be released, in paid or unpaid status, for the purpose of negotiations.

B. County. The County shall be represented in such bargaining or negotiations by such representatives as the County shall designate."

3. All of the remaining provisions of the collective bargaining agreement between the County of Kenosha and the Kenosha County Deputy Sheriff's Union shall remain the same.

COUNTY FINAL OFFER:

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1. 1988 Wage Freeze
2. 1989 Wage increase of 3%
3. Amend Section 16.1 to read as follows:

Section 16.1. Payment of Premiums. For the duration of this Agreement, the County shall make payment to the insurance carrier to be selected by the County, of funds sufficient to pay for a comprehensive hospital-surgical major medical coverage policy, including outpatient diagnostic, supplemental outpatient visits and emergency medical insurance, and the \$25.00 deductible dental plan to be agreeable to the Union. Effective January 1, 1989, the health insurance plan shall incorporate an overall policy deductible of \$100.00 single/\$300.00 family with an 80%/20% split on the next \$3,000.00 (80-County, 20-Employee).

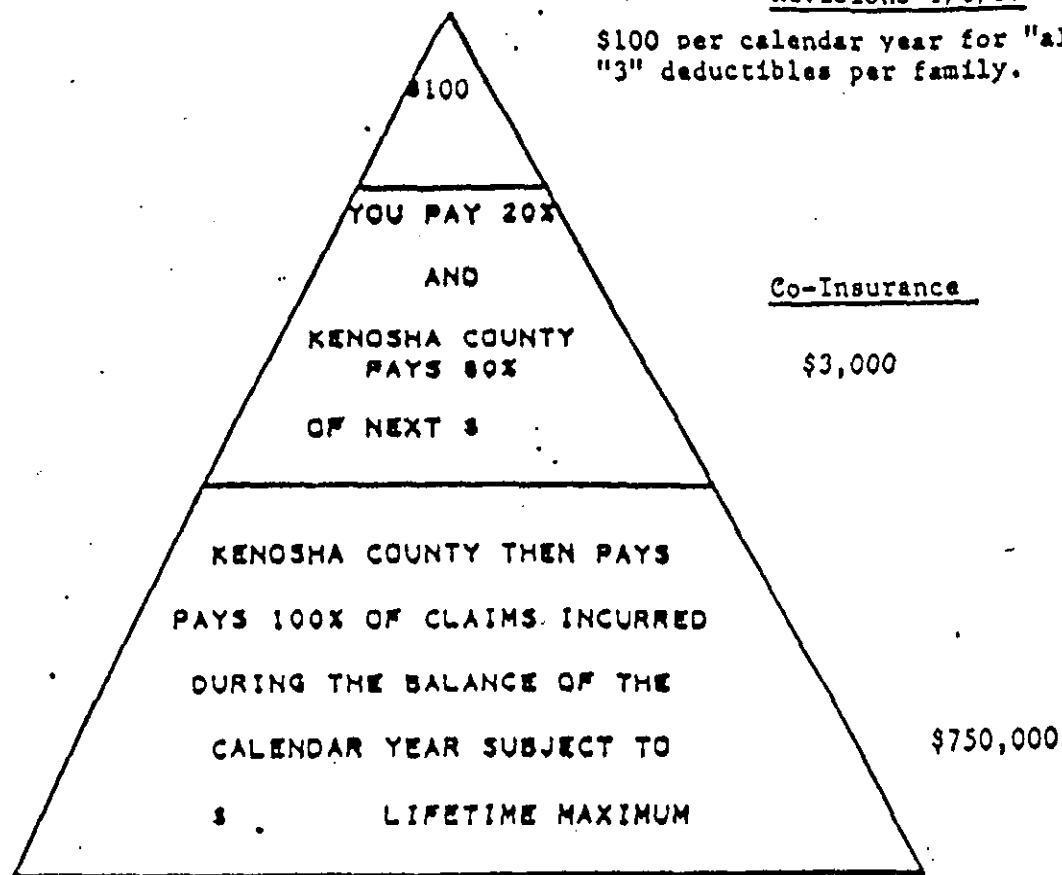
(a) Additional provisions of the Plan are listed on Appendix "B" As Amended to this Agreement which is attached hereto and incorporated by reference herein.

KENOSHA COUNTY  
COMPREHENSIVE MAJOR MEDICAL

(Appendix B as Amended)

Revisions 1/1/87

\$100 per calendar year for "all causes",  
"3" deductibles per family.



The deductible is "per calendar year" for "all causes" with a maximum of 3 deductibles per family.

The single employee is protected with a maximum out-of-pocket expense of \$700, including the deductible. An employee with family coverage is protected by a maximum out-of-pocket expense of \$900, including the deductible, in any calendar year.

ADDITIONAL BENEFITS

- Out Patient Surgery - No Deductible
- Charges Incurred Due to an Accident - No Deductible
- Prescription Drug Program: Generic Drugs - Paid at 100%, Brand Name Drugs - \$5.00 Deductible
- Hospice Care Up to 270 Days
- Nursing Home Care Up to 180 Days
- Reinstatement of Up to \$2,000/Year of Maximum Benefit
- Pre-Admission Certification of Hospital Admissions
- Continued Stay Review of Hospital Confinements
- Hospital Discharge Planning
- Kidney Transplants are covered
- Cornea Transplants are covered
- Liver Transplants are covered
- \$100 Annually toward Physical for Employee Only

POSITIONS OF THE PARTIES AND DISCUSSION

THE COMPARABLES

The parties were not in agreement as to the appropriate comparables to be applied in this case.

The Union argues that the most appropriate set of comparables are those adopted by Arbitrator Michelstetter in a prior case between the parties. Said comparables were the counties of Milwaukee, Racine, Waukesha and Walworth and the City of Kenosha.

The County argued that the set of comparables more appropriately should consist of the counties of Brown, Dane, Fond du Lac, Jefferson, La Crosse, Marathon, Outagamie, Racine, Rock, Sheboygan, Walworth, Washington, Waukesha and Winnebago.

The County argued that such comparables are justified by application of the recognized factors of population, mean income of employed persons, geographic proximity, property tax base and property taxes per capita. They also contend Arbitrator Frank Zeidler in a 1986 decision involving Kenosha County Social Services, utilized said counties as appropriate comparables.

The County addressed the basis of their grouping and the applicable factors at pages 5 and 6 of their brief as follows:

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" 1. Population and Population Trends - In 1987 Kenosha County ranked eighth out of fifteen in terms of population. Kenosha County has maintained this same ranking since 1986 and has had a relatively stable population from 1986 to 1987 and a minimal growth rate of .26% (ER. EX. 21).

2. Geographic Proximity - Six of the comparables are located in southeastern Wisconsin (ER. EX. 20).

3. Property Taxes Per Capita - In 1987, Kenosha County's per capita property taxes were \$110.00. This ranks sixth among the fifteen comparable counties (ER. EX. 25) and is only \$8.00 above the average of the comparables.

4. Property Tax Base - The County equalized value to support public services ranked seventh among the fifteen comparable counties (ER. EX. 29a).

5. Average Taxable Income Per Filer - The average taxable income per filer within Kenosha County is \$16,594. The average among the comparables is \$17,463. Kenosha County is only \$864 below average and ranks tenth among the fifteen comparable counties (ER. EX. 28).

Thus the County has demonstrated that Kenosha County ranks in the middle in terms of population, property taxes per capita and average taxable income per filer, and is consistent with the average of the overall equalized value. The other counties selected as comparables constitute a sufficiently balanced profile as to constitute a sound basis of comparison in this dispute."

The Union argued at page 13-14 of its brief that,

"...arbitrators should not alter previously set comparison groups of an individual bargaining unit, especially if that group has been set by a previous arbitration award and no valid or identifiable reason for change is offered by the party seeking to rearrange the comparables." (citations omitted)

An analysis of the various comparability characteristics and statistical data of the proposed comparables leads me to the following observations.

On the basis of geographic proximity, the counties of Racine, Waukesha and Walworth would be considered as most comparable. Providing all other characteristics are reasonably comparable, ie. size, (area and population) and tax burden per capita, I find the factors of geographic proximity to be of primary importance for comparability purposes. Such factors mean that such communities are competing in the same labor market and are subject to the cost of living that prevails in the same purchasing or "bread basket" area. Residents in the same and competing labor market area and bread basket area must receive relatively equal pay to be able to maintain a relatively equal standard of living. In this case I find the Counties of Walworth, Waukesha and Racine to be the relevant comparables with respect to the level of pay.

Such finding does not exclude all other communities from any relevant consideration. Clearly, they are all relevant in some respects. For example, Milwaukee County is relevant from the standpoint of evaluating the relative standing of employees in Milwaukee to the relative standing of Kenosha County employees. It may also be relevant in some cases to compare levels of settlement in comparable years, changes in relative ranking and changes occurring that may indicate greater comparability or a wider spread in comparable features. In this case Milwaukee County is also relevant to a slightly lessor degree than are the other three counties, because it also is in the same relative labor market and bread basket area. Only its size dictates that it be given some lessor consideration than the three that are most comparable.

Communities beyond the geographic proximity are also relevant in some cases and for some comparability purposes. For example, there may be a clearly discernible level of settlements in a particular year throughout most other communities and such fact would be relevant absent any evidence that special or mitigating circumstances existed in the community at issue that should call for something at variance from an established pattern of settlement.

The City of Kenosha is also relevant with respect to the level of pay because of being in the same labor market and bread basket area.

Union exhibits #18 - 22 contain comparative wage data at the Top Deputy/Patrol classification at the Union's comparables. In 1985 the top rate for such classification at Kenosha County was 2,345.58. Said rate made Kenosha County the leader over Racine County, which was the next highest of the comparables at 2,314.97.

Such exhibits show that in 1986 and 1987 the difference between the top rates at the two counties remained at approximately \$30.00. In 1987 Milwaukee County moved into the second spot between Kenosha and Racine but the difference remained the same between Kenosha and Racine counties. The counties of Walworth and Waukesha were lower over the years with Waukesha being the lowest in 1985 among the comparables at \$353 below Kenosha County and \$344 lower in both 1986 and 1987.

Under the Union's final offer the rate would be \$23 (rounded) below that at Milwaukee County, who would then be the leader. Kenosha would be next, followed by Racine at \$34 below Kenosha. Under the County's final offer, Racine County would be in second place behind Milwaukee. The rate for Kenosha County would be \$41 below that of Racine for 1988 and \$42 below that of Racine for 1989.

Union exhibits #24 and 25 shows that Racine and Walworth Counties settled for 3% for 1988. Milwaukee County

and the City of Kenosha settled for 5% and Waukesha County settled for 5.5%.

For 1989 three of the five are still in bargaining. Racine County has settled for 3% and Waukesha County has settled for 5%

It is clear that such comparative data favors the Union's final offer as to wages from a generic and literal analysis. The controlling issue presented in this case, however, is whether the specific economic conditions affecting Kenosha County support departure from a generic comparative analysis and modification of the historical relationship with the comparables because of such conditions.

The County argued that its final offer is supported by comparison to the internal settlements of other employees and employee groups in Kenosha County. Such other employees and employee groups have recognized the severe economic conditions that are present in the County and have accepted settlements accordingly. The County submitted exhibit #10, which is attached hereto for reference purposes.

The County's exhibits 12a through 18c contained data concerning the economic condition of Kenosha County. While such data shows, for example, that Kenosha County had a total loss in state and federal aids in both 1986 and 1987, there is no evidence that other communities did not also incur similar losses. All such data shows is that Kenosha County has a shortfall in monies available from outside sources with which to fund county services and that maintenance of the same level of services would require a greater burden on county taxpayers.

The County addressed the conditions of Kenosha County which it argued justified its lower offer over that of the Union at pages 23 - 25 of its brief as follows:



"The above-cited loss in outside revenues, combined with the stagnant equalized value of property in the County, signals an absolute limit on the ability of Kenosha County to tax for the ever-expanding cost of municipal services. Similarly, the population growth in Kenosha County since 1970 has been nearly flat (ER. EX. 21). This is particularly important since 73.5% of the County's equalized value (and concomitant taxing ability) lies in residential property, not commercial and manufacturing establishments. Employer Exhibit 30 demonstrates that only 4.3% of the County's equalized values falls in the manufacturing category; thus the image of Kenosha as an industrial behemoth with unlimited taxing ability simply is not borne out by the record, and does not represent the reality of the County's fiscal circumstances.

In addition the number employed has shrunk 11.2% from 1975 to 1987 (ER. EX. 22). These grim realities are coupled with Chrysler's announcement to close its operations in Kenosha in 1989. The impact of the Chrysler decision was recently reported at an estimated 1987 payroll of \$171.3 million, loss of 5,500 jobs directly (ER. EX. 37), and loss of hundreds of local jobs tied indirectly to the auto industry. It is predicted that the County's unemployment rate may hit 25% because of the Chrysler shutdown (ER. EX. 39). And, because of Chrysler's announcement County Executive John Collins indicated that the County should not pursue plans to remodel and expand the Courthouse nor build a highway garage/office complex (ER. EX 40). All of these economic changes readily impact the County's budget needs. In addition, it is those Chrysler employees who have to pay Kenosha County taxes, which will be expended for the cost of the wages which are at stake here.

This impacts a county which already ranks the second highest among the comparables in Aid for Dependent Children (AFDC) benefits (ER. EX. 23); ranks third highest among the comparables for County per capita expenditures (ER. EX. 24); and ranks second highest for per capita public safety County expenditures (ER. EX. 26)."

There appears to be little doubt but that Kenosha County has and is encountering some severe economic circumstances at this time.

The County argues that other employees have

acknowledged such circumstances in the County and have moderated their levels of settlement accordingly. They argue that there has been no justifiable reasons advanced by the Union in this case to except this bargaining unit from following the same settlement modifications that other employees have done.

ER. EX. 10 reveals that three bargaining units within the County settled for a wage freeze in 1987. For 1988 five additional bargaining units have settled for a wage freeze. Three of the five have also settled for 3% for 1989, while two will be bargaining on a 1989 contract.

The Union argues that the economic conditions have not changed as substantially as the County would have one believe. For example, the City of Kenosha has agreed to a 2% wage increase for its officers for 1989 and 5% for 1988 while under the same conditions as the County. Additionally there are a number of developments being built along Interstate 94 that is adding to the tax base of the County. They contend the County has not proven that the Union final offer would negatively impact on the County's economic condition.

The Union also argued that the Union's offer of a 3% increase the first year and a wage freeze the second year is consistent with that same pattern settled upon by the Institutions and Jail Staff bargaining units.

They further contend that employees in other units received other benefits in the year in which they settled for a wage freeze. For example, the nurses and health professionals received pay for bargaining , compensatory time, paid insurance coverage for retirees at 60 and new language covering use of casual days. The Assistant Attorneys have their state bar dues paid and additional wages on the four and five year increments. The AFSCME units also received various improvements in other benefits including a side letter prohibiting layoffs or hours

reduction. In this case the County has not offered similar improvements in other benefits to this unit.

The County argued in its reply brief that the three bargaining units that have settled for a wage freeze for 1988 and a 3% increase for 1989 have all settled for an identical economic package.

I have found it impossible to reconcile the opposing arguments of the parties on the matter of whether the additional benefits, if any, were of significant value so as to make the settlements distinguishable and thus not comparable. It is clear from the evidence that seven of the nine bargaining units have settled for a wage freeze in either 1987 or 1988. Only the Institutions unit and the Deputy Sheriff's unit have not incurred a no increase settlement for a given year. (according to ER. EX. 10)

In my judgment, the factor of internal comparison to other bargaining units within the County is the most compelling in this case. No other comparative statistics militate strongly one way or the other. The County's relative ranking among its most relevant comparables is not significantly eroded by implementation of the County's wage offer. The County's offer is more consistent to other internal settlements than it is inconsistent. The County's offer does save the County money in a period of economic stress. The County computed the cost difference of wages only between the two offers at \$55,252. Such amount is not insignificant.

Neither final wage offer is unreasonable under the circumstances that exist in Kenosha County. Support is found for either offer and either offer is likewise supported to varying degrees by various of the statutory factors. The Union's wage offer is subject to greater support over that of the County where the factors of external comparison is made and external pattern of settlements is applied. It is also to be favored under the cost-of-living factor.

As above stated, however, I find the internal comparison factors and the economic circumstances shown to exist, to be more compelling and ones to be afforded the greater consideration and weight in the final analysis. The County's final wage offer is therefore preferred.

The two other issues involved in the final offers of the parties are the Union's proposal of a contract provision that would afford pay for representation during negotiations and insurance coverage change.

REPRESENTATION DURING NEGOTIATIONS:

The Union contends such benefit is provided by the majority of the comparables. Milwaukee, Racine and the City of Kenosha provide such benefit. They contend such benefit has also been received by this Union under a past practice for many years. The County had never complained to the Union that the practice was being abused or that problems of scheduling or coverage resulted from the practice. The practice was made an issue at the start of these negotiations when the County advised the Union that the practice was going to be discontinued. They contend the comparables and the merits of the issue require that the Union proposal be selected as preferable.

The County argued that the Union has not demonstrated a need to change the status quo nor have they offered a quid pro quo for such proposal. They further contend such proposal is not supported by the comparables. Of the thirteen surveyed by the county, nine do not allow personnel paid time off to bargain, three allow time off with pay to bargain and one arranges work schedules to accommodate bargaining.

Union exhibit #32 shows that all nine other bargaining units in Kenosha County receive such benefit. The minimum number allowed off with pay in any unit is two employees. Where one relies on the internal data to be the most compelling and controlling as to other issues, such as in-

this case, the wage issue, it would be inconsistent to not also hold the internal comparisons to also be controlling as to this issue where the benefit is enjoyed by all except this unit, and I so hold.

INSURANCE ISSUE

The Union was covered by what is referred to as the Original Pyramid Plan during the term of the prior contract. On January 1, 1988 the County made , what the County refers to as, improvements in the Plan. Such Plan is referred to as the Revised Pyramid Plan.

The County contends the Revised Pyramid Plan provides better coverage than does the Original. They further contend it would maintain internal consistency by having this unit covered by the Revised Plan along with the other bargaining units.

It appears to me that the principal contention of the Union is that, according to their view, there was no negotiations for any change in coverage or plans. They contend it was not discussed during negotiations and was only brought up when the County included it in their final offer. The County disputes such contention.

While there are some variations in the Original Pyramid Plan by which employees in this unit were covered, it does not appear that the changes contained in the Revised Pyramid Plan are critically significant. It also appears from a comparison thereof that the Revised Plan provides better coverage from an overall assessment. It does not appear that the employees will be injured or adversely affected by a change to the Revised Pyramid Plan. (a copy of the Original Pyramid Plan is attached hereto for comparison purposes and identified as "ORIGINAL PYRAMID PLAN")

It is unfortunate that negotiations were not such that both parties felt that all issues included within their respective final offers had been fully discussed and negotiated upon during contract negotiations. I do not

believe it is within my prerogative as an interest arbitrator to consider such events as a factor within the purview of the statutes. I likewise do not believe it is within the authority of the interest arbitrator to consider such type matters with respect to a remedy or a determination of the merits of the case as it may affect the choice of one final offer over the other within the application of the statutory factors.

#### CONCLUSIONS

As above discussed, I find the statutory factors to be most supportive of the County's final offer concerning wages. As above discussed also, I find the statutory factors to be more supportive of the Union's final offer concerning representation for negotiations. With respect to the insurance issue, I find the County's offer of the Revised Pyramid Plan to have been made in good faith under the circumstances and with the intent to improve in their opinion, the coverage for the employees and to attain greater uniformity of coverage among all county employees. It is regrettable that the negotiations on such issue were not such that the Union could have had more discussion and voice in the matter, however, I do not feel empowered to do anything about such matter.

On balance of the total final offers herein, I conclude and find that the final offer of the County is most supported by the evidence and the application of the statutory factors of Section 111.77(6) of the Wisconsin Statutes. It therefore follows that the following shall issue as and for the,

#### AWARD

The Parties' 1988-89 Collective Bargaining Agreement shall include the Final Offer of the County.

Dated April 9, 1989.

  
\_\_\_\_\_  
Robert J. Mueller

KENOSHA COUNTY  
WAGE INCREASES IN  
BARGAINING UNITS  
1982-1989

Bargaining Unit	1982	1983	1984	1985	1986	1987	1988	1989
Highways - 70	Wage & COLA Freeze	COLA only	2% + COLA	9.0%-COLA eliminated	4.0%	Wage Freeze	3.0%	
Clerical - 990	Wage & COLA Freeze	COLA only	2% + COLA	9.0%-COLA eliminated	4.0%	3.0%	Wage Freeze	3.0%
Parks - 1090	Wage & COLA Freeze	COLA only	2% + COLA	9.0%-COLA eliminated	4.0%	3.0%	Wage Freeze	3.0%
Institutions - 1392	Wage & COLA Freeze	1/1 Wage & Cola Freeze 7/1 COLA only	\$ .15/hr. (ave. 1.63%)- COLA elimin.	\$.20/hr. (ave. 2/13%)	\$.25/hr. (ave. 2/61%)	\$.25/hr. (ave. 2.50%)	\$.20/hr.	
Deputy Sheriffs	Wage & COLA Freeze	6.0%-COLA eliminated	1/1 5.0% 7/1 5.0%	3.0%	3.0%	3.0%	Bd.: Wage Frze Asst: 3.0%	3.0% Wage Freeze
Assistant Attorneys	Wage & COLA Freeze	7.1%-COLA eliminated	6.8%	3.0%	3.0%	Wage Freeze	1.95% (on 2nd & 3rd steps)	
Registered Nurses - 5061	Wage & COLA Freeze	3.0%-\$150 - COLA elim.	1/1 2.0% 7/1 2.0%	3/17 1.5%	3/16 2.5%	3.0%	Wage Freeze	3.0%
Custodial - 168	Wage & COLA Freeze	7.5%-COLA eliminated	7.5%	2.8%	\$.27/hr. (ave. 2.56%)	\$.29/hr. (ave. 2.65%)	Wage Freeze	
Prof. - 990	Wage & COLA Freeze	COLA only	1% + COLA	1/1 4.0% 7/1 4.5% COLA elim.	4.0%	Wage Freeze	3.0%	
Jail Staff - 990 *	Clks/Cooks: Wage Frz - COLA elim.	Clks/Cooks: Merit	Clks/Cooks: \$150/mo. retro. pay	\$150/mo. retro. pay	\$150/mo. retro. pay through 6/30; effec. 7/1/86 - on sched.; 4.0% & adjustmts	3.0%	Wage Freeze	
	Jailers: Wage Frz - COLA elim.	Jailers: 6% + \$10/mo.	Jailers: 1/1 5%+\$10/mo. 7/1 5%					

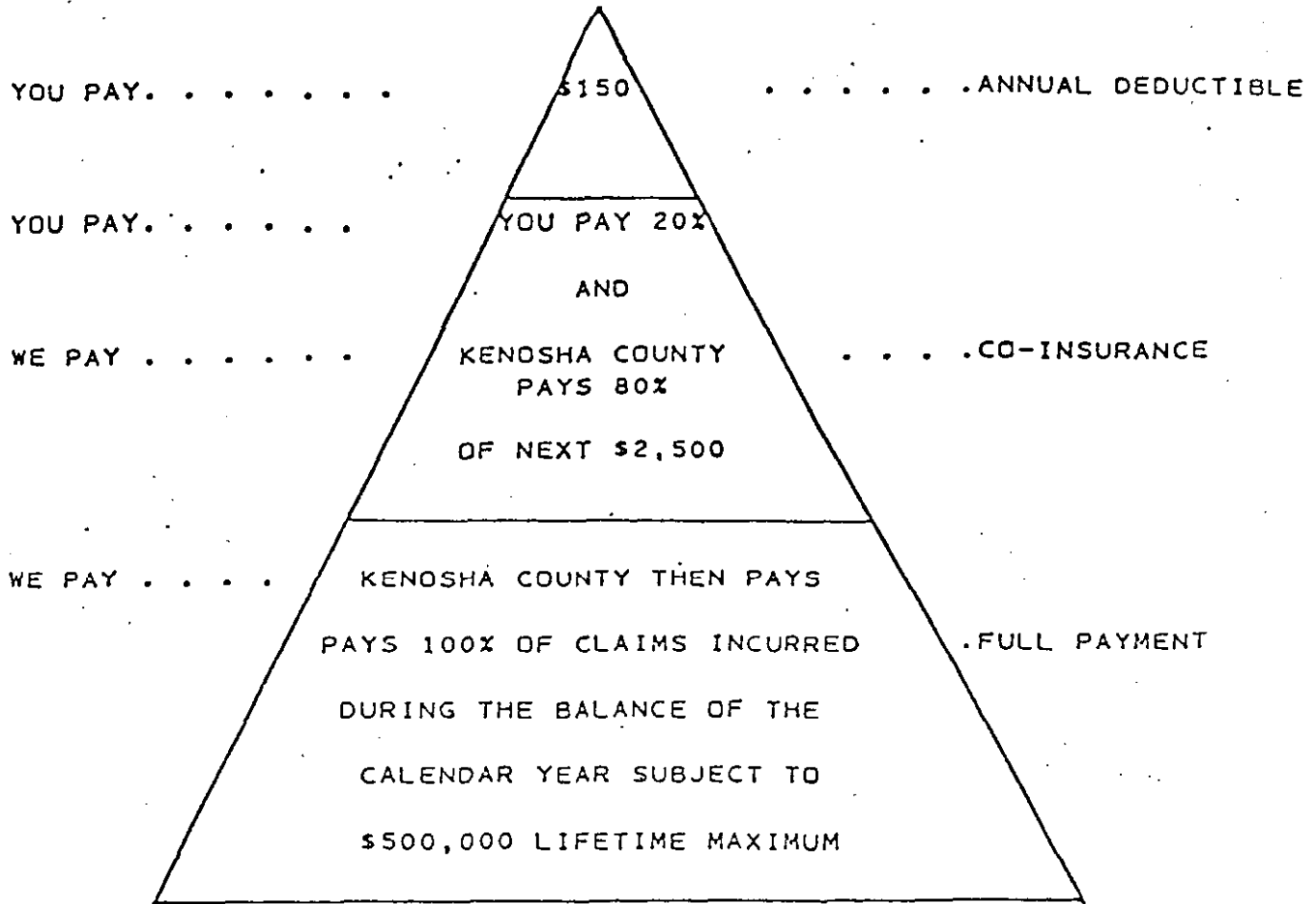
\* Prior to 1985 the Jail Staff - 990 Bargaining Unit consisted of two units.

A P P E N D I X " B "

KENOSHA COUNTY

COMPREHENSIVE MAJOR MEDICAL

"ORIGINAL PYRAMID PLAN"



THE DEDUCTIBLE IS 'PER CALENDAR YEAR' FOR 'ALL CAUSES' WITH A MAXIMUM OF 3 DEDUCTIBLES PER FAMILY.

THE EMPLOYEE IS PROTECTED WITH A MAXIMUM OUT-OF-POCKET EXPENSE OF \$650, INCLUDING THE DEDUCTIBLE AND IS FURTHER PROTECTED BY A MAXIMUM OUT-OF-POCKET EXPENSE OF \$950 PER FAMILY, INCLUDING THE DEDUCTIBLE, IN ANY CALENDAR YEAR.

ADDITIONAL BENEFITS

- OUT PATIENT SURGERY - NO DEDUCTIBLE
- CHARGES INCURRED DUE TO AN ACCIDENT - NO DEDUCTIBLE
- GENERIC DRUGS - NO DEDUCTIBLE, CO-INSURANCE 100%
- HOSPICE CARE UP TO 270 DAYS
- NURSING HOME CARE UP TO 180 DAYS
- REINSTATEMENT OF UP TO \$2,000/YEAR OF MAXIMUM BENEFIT
- PRE-ADMISSION CERTIFICATION OF HOSPITAL ADMISSIONS
- CONTINUED STAY REVIEW OF HOSPITAL CONFINEMENTS
- HOSPITAL DISCHARGE PLANNING
- Kidney Transplants are covered