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 CLAYTON LANDAAL,  
 Grievant,  
 v.  
 WILBUR J. SCHMIDT, Secretary  
 Department of Health and Social Services,  
 Respondent.  
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AMENDED  
 FINDINGS OF FACT  
 AND  
 CONCLUSIONS OF LAW  
  
 Case No. 536

This matter was submitted to the Wisconsin Personnel Board as an appeal from the final determination by the grievant's appointing officer and the final disposition under the statewide grievance procedure. The matter was presented to the Board by grievant. The Board, having considered the statements and the briefs, on behalf of the parties, makes the following

AMENDED FINDINGS OF FACT

1. Clayton Landaal, hereinafter referred to as the grievant, commenced his employment on August 1, 1960, as an Officer 1 Trainee. On February 2, 1961, he acquired permanent status as a classified employe as an Officer 1. On December 12, 1965, the grievant was reclassified to the Officer 2 classification and thereafter transferred from the Central State Hospital at Waupun to the Wisconsin State Prison as an Officer 2.

2. The classification of Officer 2 was assigned to salary range 1-08. That prior to February 8, 1970, the grievant was certified on the basis of a promotional examination as eligible for the position as Industries Technician 1 in salary range 1-09. On February 8, 1970, claimant was selected for the position as Industries Technician 1, assigned to the laundry area, and upon acceptance of this position, was placed on probation for a period of six months. Upon commencing his employment in the laundry during the probationary period, the grievant was entitled to a one step increase in salary in the amount of \$30 and his salary was increased during this probationary period for the monthly sum of \$627 to \$657.

3. After the grievant had accepted this promotional position and during the probationary period, he elected to return to his former work station and former position, and he requested that he be demoted to the Industries

Technician 1 classification, which he was serving in the probationary status, to his former classification of Officer 2, in which he had attained permanent status in class. In his letter requesting this demotion, he asked that he be permitted to retain a probationary step increase of \$30, which he had previously been awarded at the time of the acceptance of his probationary status as a result of this promotion.

4. On May 31, 1970, the employing unit of Wisconsin State Prison permitted the grievant to return to his former classification and his former position, but failed to adjust the salary by the deletion of the step increase.

5. On September 3, 1971, during the process of updating personnel payroll records, the State Bureau of Personnel discovered that the employing agency neglected to make the downward salary adjustment of \$30, which the grievant had received as a result of taking the promotional position, and advised the Department of Health and Social Services that this action was improper and requested immediate salary adjustments made.

6. On September 17, 1971, approximately 16 months after reassuming his Officer 2 position, the grievant was advised by the State that a payroll error and misinterpretation of the law and the Personnel Board Rules had been made, and that the State would seek recoupment of the allegedly excess salary payments. Sometime that month, the State decreased grievant's rate of pay from \$657 per month to \$627 per month.

7. On November 29, 1971, the grievant filed a timely appeal of the respondent's action in reducing his salary and deducting \$31.00 per month from his monthly paycheck to satisfy its claim that he owes \$480 for salary overpayment.

Upon the foregoing Amended Findings of Fact, the Board enters the following

AMENDED CONCLUSIONS OF LAW

1. That the State's interpretation of the Personnel Board Rules than an employe returning to his former position before completion

of a probationary period in a higher position shall be paid at the rate he was formerly paid in the lower position is reasonable and correct.

2. That such interpretation of the Rules is inapplicable to the grievant before the date in September 1971, when the State adjusted his salary in accordance with such interpretation, since prior to his reinstatement to his former position, it had advised him if he accepted such reinstatement he would receive the higher rate, which the grievant relied upon in accepting such reinstatement, and that the State did not advise him to the contrary until approximately 16 months later, and that the State is equitably estopped from seeking recoupment for overpaid salary.

3. That any payroll deductions from grievant's salary exacted for purposes of recoupment should be refunded to the grievant.

DATED

Jan 31, 1974

STATE PERSONNEL BOARD

By

William Ahrens  
William Ahrens, Chairman