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 JAMES A. KRUEGER, \*  
 \*  
 Appellant, \*  
 \*  
 v. \*  
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 C.K. WETTENGEL, Director, State \*  
 Bureau of Personnel and NORMAN \*  
 CLAPP, Secretary, Department of \*  
 Transportation, \*  
 \*  
 Respondents. \*  
 \*  
 Case No. 74-44 \*  
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**OFFICIAL**

OPINION AND ORDER

Before: JULIAN, Chairperson, STEININGER and WILSON, Board Members.

NATURE OF THE CASE

This appeal concerns Appellant's failure to be certified for  
 the position of Management Information Specialist 3 - Trainee  
 (Scheduler/Controller) following a competitive examination process.  
 At a prehearing conference held in this matter it was determined  
 that the issue presented for decision by the Board was whether  
 the Appellant was discriminated against because of his union  
 affiliations in the promotional potential rating he received in  
 the examination for this position.

FINDINGS OF FACT

The Appellant at all relevant times was a permanent state  
 employe in the classified service, employed as a Computer Operator 3,  
 Bureau of Systems and Data Processing, Department of Transportation.  
 He was a union member. He applied for the position of Management  
 Information Specialist 3 - Trainee (Scheduler/Controller) following

the announcement of a competitive promotional examination for the position.

Responsibility for the examination process had been delegated from the Bureau of Personnel to the Department of Transportation personnel division. The examination process leading to certification was weighted 50% for the oral examination, 40% for promotional potential rating, and 10% seniority. The Appellant's final score in the examination process was 71.7 and he ranked seventh and was not certified. Of the three persons certified for the position the person ranked first was offered and accepted the position. If the promotional potential rating had been omitted entirely from the computation the Appellant would have ranked fourth and not have been certified.

One of the persons who participated in Appellant's promotional potential rating was Donald Tietz, a computer operations supervisor. He was not Appellant's immediate, or shift, supervisor, but the next supervisor in line above that. The other employees rated by Tietz were all union members.

Sometime prior to performing this evaluation, Mr. Tietz asked the Appellant for his home telephone number so that he could be contacted in the event of an emergency or other problem during the twenty-four hour computer operation. The Appellant stated that he did not think he needed to provide his private phone number as he (Tietz) already had a number where he could be reached. Mr. Tietz then remarked that he did not understand the reasoning for Appellant's refusal to provide his home phone number, that the refusal was disobedience of a direct order, and that it could affect Appellant's career path, or words to that effect.

Approximately two months before being involved in the Appellant's promotional potential rating, Mr. Tietz in his supervisory role determined adversely to Appellant the first step of a grievance concerning the propriety of requiring divulging the phone number.

Mr. Tietz performed the promotional potential rating in conjunction with Mr. Nelson, his immediate superior who was the common rater to all of the individuals being rated. Mr. Tietz made recommendations which Mr. Nelson ruled on. Mr. Tietz's recommendations were based on his observations of Appellant's work product, some limited observation of his performance of his duties, and consultation with his direct supervisor. Mr. Tietz has been involved with Appellant's supervision since approximately 1969.

#### CONCLUSIONS OF LAW

We conclude that in this record there is no evidence of anti-union bias or discrimination, nor, for that matter, any other improper influence, in the Appellant's promotional potential ranking. The fact that Mr. Tietz was involved in certain conflict with the Appellant concerning work related matters, and then became involved in a grievance, does not disqualify him from evaluating the Appellant. This type of contact between supervisors and employes is inevitable. It contributes to the overall impression a manager has of his or her employes performance and abilities. This type of contact should not disqualify a supervisor from evaluating an employe unless there is an additional factor present that is not job related and/or is forbidden by law such as race discrimination, personal animosity, or anti-union bias. However, an employe is not entitled to the disqualification of a

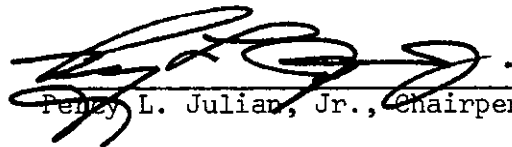
supervisor as an evaluator of that employe merely because of an employment-related incident that may have resulted in the supervisor's disapproval and criticism of the employe.

ORDER

IT IS HEREBY ORDERED that the Respondent's actions are affirmed.

Dated October 20, 1975.

STATE PERSONNEL BOARD

  
Percy L. Julian, Jr., Chairperson

Board Member Wilson (concurring).

I concur with the result reached in this matter. It was not improper under our interpretation of the civil service law of this state for the Respondent to have utilized the evaluation of Mr. Tietz. However, in my opinion, in light of the conflict between him and the Appellant that is apparent on the record, the agency, to ensure the appearance of fairness and to promote harmonious employe relations, should have tried to utilize another evaluator for this promotion.