

Key Quotes from Jeffrey Jacobs' Decision & Award

“The record showed that the document was paid for using public money and therefore should have been disseminated to the public. There appeared no information in it that warranted keeping all or part of it private or confidential or that fell within one of the exceptions under Montana law.” P. 36.

“Following the dictates of the constitution, state or federal, is paramount in ensuring that law enforcement officers follow the law in order to enforce it.” P. 35, fn 2.

“The record showed that the document was paid for using public money and therefore should have been disseminated to the public. There appeared no information in it that warranted keeping all or part of it private or confidential or that fell within one of the exceptions under Montana law.” P. 36.

“Any rule that requires employees to secure permission from an employer as a precondition to engaging in Section 7 activities violates the Act.” P. 37. (Section 7 = concerted activities/mutual aid and protection.)

“Where the employee is a Union official exercising rights on behalf of the bargaining unit and in pursuit of collective bargaining, conduct that otherwise may be the subject of discipline remains protected activity.” P. 38.

“When the Union representative is acting in an official capacity ... the Union representative and the company have been described as ‘equals.’” P. 38.

“Here the inescapable conclusion is that the grievant was acting in her capacity as the Union President when she sent the document to the Union.” P. 39

The survey summary “was the subject of considerable concern by MHP officers who expressed their concerns to (Bragg) in her role as the Union president.” P. 40.

“Rules that require that employees check in with management before discussing their terms and conditions of employment are suspect and could chill concerted activity.” P. 40 fn. 4.

The summary included “information that went directly to working conditions.... This of course is a matter that directly relates to the Union’s right to know this information and to guide their actions as the exclusive bargaining representative for the MHP officers within the bargaining unit.” P. 41.

(Bragg) “need not obey an order or rule if he or she ... reasonably believes it to be illegal, unethical, or immoral.” P. 42, fn. 5.

“Simply sending something out that may be perceived as negative by the press does not override the Union’s right to engage in concerted activity.” P. 43.

“The evidence showed that the State sent the survey out, not the grievant, and the results were somewhat negative on several issues, including the morale of some MHP officers. Thus, the ‘disruption’ existed before the grievant sent the report to the public.” P. 44.

“There was not (just cause) based on the clear fact that the grievant acted in her role as the Union President and sent what the State acknowledged was a public document to the Union.” P. 47.