In my view, arbitration awards that have not been reviewed by a court should not be given preclusive effect in subsequent §1983 litigation. At the outset, it is important to note that §1738 does not have any bearing on this question. Since that section governs the preclusive effect of the "judicial proceedings of any court of any ... state," in Kremer v. Chemical Construction Corp., 456 U.S. 461 (1982), we stated that §1738 does not apply to arbitration awards.

Our prior cases also compel the conclusion that arbitration awards do not have preclusive effect in §1983 proceedings. In Barrentine v. Arkansas-Best Freight System, 450 U.S. 728 (1980), we held that arbitration of a wage claim did not preclude a subsequent action alleging a violation of the Fair Labor Standards Act. Similarly, in Alexander v. Gardner-Denver Co., 415 U.S. 36 (1973), we held that an employees' right to a trial de novo under Title VII would not be foreclosed if his claim of discriminatory discharge had been previously submitted to arbitration. In both of those cases, we cited several reasons why arbitration would not adequately protect the plaintiff's statutory rights. Those reasons are equally applicable here. First, the interests of the union and the individual plaintiff may diverge. As a result, the union may not press the arbitration claim vigorously. Second, arbitrators have no

expertise in applying and interpreting federal laws. Third, arbitrators frequently will not have the authority to grant any remedy for a violation of federal laws. Fourth, the remedies available in arbitration may not be coextensive with those available in a §1983 suit. Fifth, many of the procedural protections that are available in a judicial proceeding are unavailable in arbitration. As we stated in Alexander v. Gardner-Denver Co., in arbitration proceedings, "the usual rules of evidence do not apply; and rights and procedures common to civil trials, such as discovery, compulsory process, cross-examination and testimony under oath, are often severely limited or unavailable." Indeed, because of our heavy reliance on these factors in Barrentine, and because, as in Barrentine, the rights asserted in this case are individual, judicially enforceable rights that exist independently of the collective-bargaining agreement, I do not believe that any meaningful distinction can be drawn between Barrentine and this case. Finally, any argument that it is significant that the arbitrator addressed the reasons for MacDonald's discharge is, I believe, foreclosed by Gardner-Denver. There, we declined to adopt a rule of preclusion, or even one of deference, despite the fact that the employees' claim of discriminatory discharge, which formed the basis for his Title VII action, had already been presented to the arbitrator. For these reasons, an arbitration proceeding should not have any preclusive effect in a subsequent §1983 suit.

REVERSE