**[Powell Oral Argument Notes 02-27-84 Images LFP256F10021-23][[1]](#footnote-1)**

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Joe

[[2]](#footnote-2)

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Achtenberg (Petitioner)

Petitioner didn’t control his own defense before the arbitrator. Union appointed lawyer and initiated arbitration.

Issue before arbitrator was not the First Amendment claim. On facts is similar to Gardner-Denver.[[3]](#footnote-3)

BRW asked whether there would be preclusion in state court.

Michigan law would not give preclusive effect to arbitration decision in a state civil rights suit. If state court suit involved a dispute under [the] collective bargaining agreement, there would be preclusion.

Here suit raises a constitutional question – First Amendment – not a question that arbitrator decided.

State law is not relevant in this case. If we think it is relevant would should [sic] decide it here – not necessary to remand.

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Smith (Respondent)

Petitioner has filed at least four proceedings on all sorts of claims.

Arbitrator did not have jurisdiction to pass on the First Amendment issue.

Petitioner waived First Amendment claim by failing to rely on this at arbitration stages.

Briefs were filed with arbitrator and he wrote a 13 page opinion.

McDonald negotiated the collective bargaining agreement and was the union steward. Therefore, [he] was familiar with its provisions.

WHR noted that this “factual background” is irrelevant to decision of this case.

§ 1983 [is a] different type statute from Title VII and Fair Labor Standards Act.

1. Words added by the editor for clarity are enclosed in brackets as are editor comments. All footnotes have been added by the editor. Interpretations of which the editor is particularly uncertain are indicated in italics and alternative interpretations may be indicated in footnotes. [↑](#footnote-ref-1)
2. The name “Joe” in the upper left corner of the first page presumably refers to Joseph E. Neuhaus who was Justice Powell’s clerk assigned to the case. [↑](#footnote-ref-2)
3. *Alexander v. Gardner-Denver,* 415 U.S. 36 (1974) (Powell, J.), which held that arbitration awards would not be given preclusive effect in subsequent Title VII employment discrimination cases. [↑](#footnote-ref-3)