

DRAFT

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Re: McDonald v. City of West Branch

This is an outline of my tentative views:

After losing an arbitration (discharged for good cause), McDonald sued the City under §1983³, alleging discharge for exercising First Amendment rights. The question is whether CA 6 correctly gave preclusive to the arbitrator's decision?

Gardner-Denver (my opinion) sustaining a Title VII suit, and Barrentine v. Arkansas Best Freight (suit under FELA) appear² to control this case. Both denied preclusive effect of an arbitrator's factual decision -- relying primarily on the fact that Congress had provided explicit remedies under Title VII and the FLSA Act.

Here, no such specific remedies are provided by §1983. Arguably, this could justify a different result. Yet, Congress imposed no limit on the use of §1983.

Arbitration is different: (i) ^{The Arbitrator} he enforces the CRA -- not statutory rights; (ii) he knows the "law of the shop", not general law; (iii) the fact-finding in arbitration is not nearly as comprehensive or as protected by rules, as

in a Court; and the Union -- not the employee -- decides whether to arbitrate and provides the Union lawyer.