

Inchale  
?

David

McDonald v. City of West Branch, Mich., No. 83-219  
Recommendation: Deny or CFRecord

Memo  
not signed

*yes*

I would deny this petition for several reasons. First, the issue decided below is more difficult than the preliminary memorandum suggests. The purpose of an agreement to submit disputes to arbitration is to spare the contracting parties the costs of further litigation in court. This purpose is defeated when parties are permitted to relitigate the claims submitted to arbitration. Hence, arbitration awards generally have preclusive effect. See Restatement of Judgments 2d, § 84(1). Further, because the authority of the arbitrator derives solely from contract, the scope of his authority to decide claims or issues is a matter of contractual interpretation to be determined by consulting the intent of the parties. The CA 6 found specifically, though without extensive discussion, that "[t]he parties have agreed to settle this dispute through the private means of arbitration," and concluded that petr's section 1983 claim was nothing more than an attempt to vacate the arbitrator's award. Petn, at A3. And the CA decision may be consistent with Alexander v. Gardner-Denver Co., 415 U.S. 36 (1971), because that case rests upon an interpretation of the particular purposes underlying Title VII and the federal labor laws, neither of which are relevant to this section 1983 action against a municipality.

Second, because the appropriate preclusive effect to be given to the arbitration award depends in part upon the terms of the contract and the quality of the arbitration procedures, the issue here is to that extent "fact-bound." See Restatement of Judgments 2d, § 84(3) (a), (b). If the contract does not purport

to preclude entirely further litigation or if the procedures specified are inadequate, the broader question petr seeks to pose does not arise. It does not appear from the documents provided in the petn that this is an appropriate case for review. For that reason, if there is a possibility that cert will be granted, I would first call for the record.

Third, the only circuit court conflict is within the CA 6. Given the importance and intricacy of this issue, I would wait for other circuits to express their views before granting cert. There is certainly no need for this Court to grant cert on a conflict within the CA 6 which that circuit itself did not bother to resolve.