

POST-ARGUMENT MEMO ✓

McDonald v. City of West Branch
No. 83-219

I recommend reversal.

Although not squarely controlling, a great deal of the rationale of Alexander v. Gardner-Denver supports the conclusion that arbitration awards should not be given preclusive effect in §1983 actions, e.g., greater procedural protections in judicial proceedings, such as discovery and compulsory process; availability of broader remedies in § 1983 actions; greater legal expertise of judges compared with arbitrators; the arbitrator's focus on "the law of the shop, not the law of the land"; more thorough appellate review of court decisions; and the fact that the union's interest in the management of a grievance may conflict with the employee's.

I find resps' attempt to distinguish Title VII from § 1983 unpersuasive. They point to some factual distinctions between the two statutes, but do not provide any principled basis for distinguishing them in this context. I also find their reliance on 28 U.S.C. § 1738 misplaced, in light of the fact that that section applies only to judicial proceedings, and the arbitration decision in this case was unappealed and apparently unappealable on the merits.

February 27, 1984

Kingsley