Case Notes

Civil Procedure—AN ORDER DISMISSING PART OF A PETITION IS ORDINARILY NOT DIRECTLY APPEALABLE IN THE ABSENCE OF SOME AFFIRMATIVE PROVISION BY STATUTE OR RULE, AND AN INTERLOCUTORY APPEAL WITHOUT COMPLIANCE WITH RULE 332, RULES OF CIVIL PROCEDURE, IS SUBJECT TO DISMISSAL.—*Bigelow v. Williams* (Iowa 1972).

Plaintiff Bigelow brought an action for wrongful death caused by a motor vehicle collision. After a series of motions and amendments, the trial court dismissed Divisions II through V of plaintiff's second amended and substituted petition, leaving Division I remaining. Plaintiff subsequently filed amendments to the second and substituted petition as against one defendant, Williams. The trial court sustained defendant's motion to dismiss the amendments. Plaintiff, treating the order dismissing Divisions II through V as final within the meaning of Rule 332, Rules of Civil Procedure, filed notice of appeal. Plaintiff also filed notice of appeal as to the order dismissing the amendments. *Held,* both appeals dismissed. An order to dismiss part of a petition is ordinarily not directly appealable in the absence of some affirmative provision by statute or rule, and an interlocutory appeal without compliance with Rule 332, Rules of Civil Procedure, is subject to dismissal. *Bigelow v. Williams,* 193 N.W.2d 521 (Iowa 1972).

In *Bigelow* the plaintiff had pleaded but a single cause of action although pleading more than one basis for recovery.[1] When the trial court sustained defendant's motion to dismiss as to Divisions II through V, plaintiff still had his cause of action pending, predicated upon the one remaining theory of relief in Division I. In dismissing plaintiff's appeal, the Iowa supreme court distinguished appeals from a dismissal of separate causes of action, citing *McGuire v. City of Cedar Rapids,*[2] stating that the rule as to the appealability of orders dismissing a part of a petition is different if the petition alleges several distinct causes of action which are separable.[3] That is, if the plaintiff has pleaded two or more causes of action, and one is dismissed, he may appeal the dismissal.

In comparing *Bigelow* and *McGuire* as to the appealability of interlocutory orders, the situation seems at first glance anomalous; for the conclusion that *Bigelow* seems to draw is that one pleading a single cause of action based upon more than one theory of recovery has no right to apeal an interlocutory

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1 Bigelow v. Williams, 193 N.W.2d 521 (Iowa 1972).
2 189 N.W.2d 592 (Iowa 1971).
3 193 N.W.2d at 523.

order dismissing a part of his theory of relief. Yet if the plaintiff pleads two causes of action, as in *McGuire,* and has one cause of action dismissed, such an interlocutory order is appealable.[4] No such express distinction is provided for in either Rule 331 or Rule 332, Rules of Civil Procedure, which together set forth the essential requirements for appeal. Rule 331 provides basically the right to appeal from all final judgments and decisions, and further provides that no interlocutory ruling or decision may be appealed except as provided in Rule 332. Any final adjudications in the trial court under Rule 86, involving the merits or materially affecting the final decision, are also appealable.[5] Rule 332 provides for appeal from interlocutory orders by application to the supreme court or a justice thereof, and providing such ruling or decision involves substantial rights and will materially affect the final decision, and that a determination of its correctness before trial on the merits will better serve the interests of justice. Permission to appeal an interlocutory order or ruling under Rule 332 is not necessary where the appeal is from a final adjudication in the trial court under Rule 86.[6] It is at least arguable that an interlocutory order

[4] Even though a ruling under IOWA R. CIV. P. 86 can be treated as a final judgment, as discussed in the text, *infra,* such a ruling is still interlocutory when the subject matter of the litigation is still pending in some form. IOWA R. CIV. P. 86 reads:

> Pleading over—election to stand. If a party is required or permitted to plead further by an order or ruling, the clerk shall forthwith mail or deliver notice of such order or ruling to the attorneys of record. Presence of counsel when the court announces such ruling or order shall be the equivalent of such mailing or delivery. Unless otherwise provided by order or ruling, such party shall file such further pleading within seven days after such mailing or delivery; and if such party fails to do so within such time, he thereby elects to stand on the record theretofore made. On such election, the ruling shall be deemed a final adjudication in the trial court without further judgment or order; reserving only such issues, if any, which remain undisposed of by such ruling and election.

[5] IOWA R. CIV. P. 331 provides:

> From final judgment. (a) All final judgments and decisions of courts of record, and any final adjudication in the trial court under rule 86 involving the merits or materially affecting the final decision, may be appealed to the supreme court, except as provided in this rule and in rule 333. For the purpose of this rule any order granting a new trial (not including an order setting aside a judgment by default other than in actions for divorce or annulment) and any order denying a new trial shall be deemed a final decision. Any order setting aside a default decree of divorce or annulment shall also be deemed a final decision. (b) No interlocutory ruling or decision may be appealed, except as provided in rule 332, until after the final judgment or order. No error in such interlocutory ruling or decision is waived by pleading over, or proceeding to trial. On appeal from the final judgment, there may be assigned as error such interlocutory ruling or decision or any final adjudication in the trial court under rule 86 from which no appeal has been taken, where such ruling, decision, or final adjudication is shown to have substantially affected the rights of the complaining party.

[6] IOWA R. CIV. P. 332 provides:

> From interlocutory orders. (a) Any party aggrieved by an interlocutory ruling or decision, including one appearing specially whose objections to jurisdiction have been overruled, may apply to the supreme court or any justice thereof to grant an appeal in advance of final judgment. Such appeal may be granted, after notice, and hearing as provided in rules 347 and 353, on finding that such ruling or decision involves substantial rights and will materially affect the final decision, and that a determination of its correctness before trial on the merits will better serve the interests of justice. No such application is necessary where the appeal is, pursuant to rule 331, from a final adjudication in the trial court under rule 86. (b) The order granting such appeal may be in terms of

dismissing a distinct basis for relief pleaded under a single cause of action could sufficiently meet the appealability criteria established by Rules 331 and 332.

In *McGuire*, the plaintiff had pleaded two causes of action against two different defendants and the trial court had sustained one defendant's motion to dismiss. Plaintiff then appealed under Rule 332, although she had not obtained permission to appeal. The defendant contended that the dismissal of plaintiff's divisions relating to the defendant was not a final order and adjudication because the dismissal had not disposed of the subject matter of the litigation as relates to all parties.[7] Plaintiff maintained that the ruling was final in nature as no issue remained to be decided as to that particular defendant. The supreme court held that under operation of Rule 86, Rules of Civil Procedure, a "final adjudication" for appeal purposes had resulted, and that "[t]he rule that a judgment to be final must dispose of the entire case does not apply where several distinct causes of action are united in the same suit."[8] In essence, then, the appeal in *McGuire* was not interlocutory under Rule 332, but rather an appeal from final adjudication under Rule 331.

The distinction thus made, that *McGuire* was appealable because it was from a "final adjudication", in contrast to *Bigelow*, which was deemed interlocutory, is not a refinement found in the Rules of Civil Procedure. Rule 331 does provide for appeal from "any final adjudication in the trial court under rule 86 involving the merits or materially affecting the final decision."[9] It is worth noting that the basis for appeal from interlocutory orders under Rule 332 establishes much the same criteria for appeal.[10] However, an appeal from a Rule 86 final adjudication is not, as has been pointed out, truly a final judgment. Final judgment has been defined in Iowa as one that finally adjudicates the rights of the parties. It must put beyond the power of the court making the ruling the ability to place the parties in their original positions.[11] *McGuire* makes this distinction, holding that "[i]f the ruling be one to strike certain allegations to be tried, clearly the 'final adjudication' does not dispose of the entire case in the trial court and the ruling is therefore interlocutory."[12] But when a Rule 86 final adjudication is one "involving the merits or materially affecting the result",[13] it becomes a final judgment for appeal purposes under

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advancing it for prompt submission. It shall stay further proceedings below, and may require bond.

[7] Defendant's contention in *McGuire* was that with a cause of action still pending, based upon the same operable facts that the dismissed cause of action was based upon, plaintiff was attempting to appeal from an interlocutory ruling, and since she had not obtained permission to do so, the appeal should be dismissed. 189 N.W.2d 592 (Iowa 1971).

[8] 189 N.W.2d 592, 596 (Iowa 1971).

[9] IOWA R. CIV. P. 331.

[10] IOWA R. CIV. P. 332.

[11] Forte v. Schlick, 248 Iowa 1327, 1329, 85 N.W.2d 549, 551 (1957). *See also* Johnson v. Iowa State Highway Commission, 257 Iowa 810, 134 N.W.2d 916 (1965); *In re* Swanson's Estate, 239 Iowa 294, 31 N.W.2d 385 (1948).

[12] 189 N.W.2d 592, 596 (Iowa 1971).

[13] *Id.*

Rule 331. Rule 86 operates as a final adjudication, and is thus appealable, if, after seven days following an adverse ruling, a party fails to plead further. His failure is treated as an election to stand upon his pleadings and the ruling, and the ruling is deemed a final adjudication in the trial court. Formal entry of the judgment has not been held necessary for appeal purposes.[14]

The distinction made by *McGuire* in comparison to *Bigelow* as to the appealability of what are essentially, in both cases, interlocutory orders raises two questions. First, under Rule 331, allowing certain interlocutory orders to be appealable as final judgments under operation of Rule 86, such criteria for appeal is not limited to any particular type of order other than one "involving the merits or materially affecting the result." Thus Rules 331 and 332 apparently do not provide an explanation of why an order dismissing a cause of action where another cause still remains is appealable, whereas an order dismissing one theory of recovery under a single cause of action where another theory still remains is not appealable. And second, even if the ruling in *Bigelow* is deemed not to fit the criteria for a Rule 86 final judgment, why is it not appealable under Rule 332? Such a ruling could conceivably meet the requirements therein, which are fundamentally the same as those in Rule 331. Since the appeal was not expressly dismissed for failure to obtain permission, in the manner that the supreme court has frequently handled other attempts to appeal interlocutory orders without permission,[15] it apparently met the permission requirement.

Reuter v. City of Oskaloosa[16] clarifies some of the confusion as to the concept of final adjudication under Rule 86. While it is recognized that a ruling striking certain allegations of pleading, leaving other allegations to be tried, is clearly not a "final adjudication" because it does not dispose of the entire case in the trial court, and the ruling is therefore interlocutory, *Reuter* goes on to explain the distinction:

> In 1945, the court amended Rules 331 and 332 to make one exception to the foregoing dilemma. This involves one who stands on his pleadings under Rule 86, thus suffering a "final adjudication." If such adjudication involves the merits or materially affects the final decision, he may choose between appealing from it as a matter of right; or later assigning it as error on appeal from the later judg-

[14] Town of Lakota v. Gray, 240 Iowa 193, 35 N.W.2d 841 (1949). *See also* The J.R. Watkins Co. v. Kramer, 250 Iowa 947, 97 N.W.2d 303 (1959); Mutzel v. Northwestern Bell Telephone Co., 247 Iowa 14, 72 N.W.2d 487 (1955); Wernet v. Jurgensen, 241 Iowa 833, 43 N.W.2d 194 (1950); Wright v. Copeland, 241 Iowa 447, 41 N.W.2d 102 (1950).

[15] The Iowa supreme court has consistently dismissed appeals attempted from interlocutory rulings where no permission has been obtained, and in doing so has set forth the permission requirement under Rule 332. *See* St. Joseph Hospital v. Peterson, 196 N.W.2d 418 (Iowa 1972); Johnson v. Iowa State Highway Commission, 257 Iowa 810, 134 N.W.2d 916 (1965); Forte v. Schlick, 248 Iowa 1327, 85 N.W.2d 549 (1957); Hubbard v. Marsh, 239 Iowa 472, 32 N.W.2d 67 (1948); Ruth & Clark, Inc. v. Emery, 235 Iowa 131, 15 N.W.2d 896 (1944).

[16] 253 Iowa 768, 113 N.W.2d 716 (1962).

> ment. He has this choice, whether the ruling is "final" or not. He thus escapes the difficulties of "finality."[17]

Of course, the same problem is present under a Rule 86 judgment, for appeal purposes, concerning the difficulties of when an order affects the merits or the decision. Rule 86 adjudications are also reviewable on appeal from the later final judgment.[18]

When the attempted appeal is from a Rule 86 final judgment, no application for leave to appeal is necessary, provided, of course, that the adjudication has been one involving the merits or materially affecting the final decision.[19] *Forte v. Schlick*[20] explains the reason for Rule 86 and its appealability under Rule 331 as a final judgment: "Rule 86 was designed primarily to render unnecessary the formal entry of final judgment against a party who obviously has decided to stand on his pleadings following a ruling on a motion to dismiss which is adverse to him. Such a party in effect suffers a final adjudication against him."[21] *Goldstein v. Brandmeyer*[22] qualifies this type of final adjudication, though, by stating that Rule 86 does not relate to appellate procedure but only to trial procedure; that is, such a ruling is settled only so far as the trial court is concerned, and is thus appealable only if it involves the merits or materially affects the result. The *Goldstein* decision makes the further distinction that if the intermediate ruling is one requiring the pleader to state or set out something more specifically, his refusal or failure to comply must result in a final adjudication, and thus the order is appealable as a matter of right.[23]

In deciding *Bigelow*, the Iowa supreme court held that a Rule 86 final judgment was not applicable because Division I still remained after defendant's motion to dismiss had been sustained as to Divisions II through V.[24] Since no responsive pleading had yet been filed by the defendant, the plaintiff could amend his petition.[25] This, perhaps, is the distinction between *Bigelow* and *McGuire*, for in the latter case, with all of one cause of action dismissed

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[17] *Id.* at 772, 113 N.W.2d at 718.
[18] *Id.*
[19] Forte v. Schlick, 248 Iowa 1327, 1330, 85 N.W.2d 549, 551 (1957).
[20] *Id.*
[21] *Id.*
[22] 243 Iowa 679, 53 N.W.2d 268 (1952).
[23] *Id.* at 684, 53 N.W.2d at 271-72.
[24] 193 N.W.2d at 522.
[25] *Jensen v. Nolte*, 231 Iowa 1103, 1105, 3 N.W.2d 140, 141 (1942), may bring this distinction into sharper focus in analyzing a situation similar to that in *Bigelow:*

> Upon the record before us, the order appealed from appears to be purely interlocutory. The defendant made no election whether it would amend its pleading or stand upon it. Nor was judgment entered against it. So far as appears, the case is still pending in the trial court. Upon the record thus disclosed, the order was not appealable. That is to say, a review of such ruling can be had only upon an appeal from the final judgment.

See also Weir v. Brune, 364 Mo. 415, —, 262 S.W.2d 597, 600 (1953), cited by the court in *Bigelow*, where the Missouri supreme court said:

> An order dismissing some of several alternative counts, each stating only one legal theory to recover damages for the same wrong, is not considered an appealable judgment while the other counts remain pending because the counts are concerned with a single fact situation.

against one defendant, there remained nothing pending as to that defendant, even though a cause of action, based upon the same operable facts (the same accident), remained as to another defendant. Apparently then for a Rule 86 adjudication, and thus the right to appeal under Rule 331, plaintiff must have either his entire petition or a separable cause of action dismissed, either of which would be a ruling involving the merits or materially affecting the result, and then elect to stand upon the pleadings after the ruling, thereby suffering in effect a final judgment (with formal entry of a final judgment not being essential). Rule 86 itself does not expressly limit its definition of such a final adjudication so rigidly,[26] for as pointed out above, such a final adjudication is one for trial court purposes only, and further issues may still remain at that level. But the precedent for appealability under a Rule 86 adjudication has been according to the requirements outlined above.[27]

Eliminating the possibility of a Rule 86 adjudication in *Bigelow* essentially eliminates the right to appeal under Rule 331. Thus the only avenue of appeal open to a plaintiff in the *Bigelow* situation is an interlocutory appeal under Rule 332. For an appeal of this type, permission must first be obtained from either the supreme court or a justice thereof, and the ruling or decision must be one that involves substantial rights and will materially affect the final decision, and that a determination of its correctness before trial on the merits will better serve the interests of justice. Although the court in deciding *Bigelow* did not dismiss the appeal on the express grounds that permission had not been obtained (and such procedure in dismissing appeals is frequently, if not consistently, followed), if the plaintiff in *Bigelow* had not obtained permission to appeal, then the dismissal of the appeal was according to the Rules of Civil Procedure.[28] If permission to appeal had been obtained, then the question remains as to whether a dismissal of one of plaintiff's theories for recovery pleaded under a single cause of action meets the other requirements for an interlocutory appeal.

Rules 331 and 332 replaced Section 12823 of the Iowa Code, 1939, which provided for interlocutory appeal from "an intermediate order involving the merits or materially affecting the final decison."[29] Thus, the Rules of Civ-

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[26] IOWA R. CIV. P. 86.

[27] *See* Gradischnig v. Polk County, 164 N.W.2d 104 (Iowa 1969); Cover v. Koeper, 258 Iowa 35, 137 N.W.2d 594 (1965); Winneshiek Mutual Ins. Ass'n v. Roach, 257 Iowa 354, 132 N.W.2d 436 (1965); Reuter v. City of Oskaloosa, 253 Iowa 768, 113 N.W.2d 716 (1962); Forte v. Schlick, 248 Iowa 1327, 85 N.W.2d 549 (1957).

[28] *See* Allen v. Lindeman, 164 N.W.2d 346, 350 (Iowa 1969), where the supreme court held:

> However, where the order to be reviewed is interlocutory in nature, not complete and further action is withheld by the trial court pending our opinion, the matter need not be reviewed by this court without prior permission to file the review papers. Rule 352, R.C.P. provides "an application to grant an appeal may be treated as a petition for certiorari." But we do not have such an application before us. We have only an attempt to appeal an interlocutory order as a matter of right.

The appeal was dismissed.

[29] IOWA CODE § 12823 (4) (1939).

il Procedure, adopted in 1943, did not substantially alter the criteria for appealing interlocutory orders, and thereby retained the problem of determining when an intermediate ruling would fit the appealability requirements. *Dorman v. Credit Reference & Reporting Co.*[30] recognized the problem and attempted a definition of such an intermediate order: "It is not always easy to determine whether an intermediate order necessarily involves the merits or materially affects the final decision. The test by which the right of appeal from an intermediate order is to be determined is: Will the party aggrieved thereby be deprived of some right which cannot be protected by an appeal from the final judgment?"[31] The test outlined in *Dorman* provides but a framework for determining if a given interlocutory order can meet the requirements for appealability. One must rely upon determined cases to see how the supreme court has applied the Rule 332 requirements. In *Krausnick v. Haegg Roofing Co.*[32] plaintiff appealed from an interlocutory ruling striking certain parts of the second count of his petition. The supreme court granted an appeal, and in affirming the order, held that "the stricken portions were quite immaterial to a cause of action based on the theory of imputed negligence because of the relationship of master and servant."[33] The *Krausnick* case appears quite similar to *Bigelow*, and since the plaintiff in *Krausnick* had applied for and been granted permission to appeal, perhaps the distinction is that while the court did not reject the appeal expressly for lack of permission, that was indeed what occurred in *Bigelow*.[34] Since in *Krausnick* the court affirmed the lower court's ruling as to the immaterial parts of plaintiff's petition, it does not seem that such a decision would merit appeal to any greater degree than the *Bigelow* situation. That is, both cases seem to involve the merits or materially affect the final decision to the same extent. And either ruling would be appealable from final judgment in any case (aside from the plaintiff having the right to amend if no responsive pleading had yet been filed).

More apparent as an interlocutory ruling fitting the Rule 332 requirements is *Iowa National Mutual Insurance Co. v. Chicago, Burlington, & Quincy Railroad Co.*[35] where the appeal was granted from the trial court's ruling on defendant's motion that the plaintiff be required to state how much compensation it claimed to have paid decedent's widow, and that the court

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30 213 Iowa 1016, 241 N.W. 436 (1932).

31 *Id.* at 1019, 241 N.W. at 438. *See also* Commercial Credit Corp. v. Interstate Finance Corp., 233 Iowa 375, 9 N.W.2d 369 (1943).

32 236 Iowa 985, 20 N.W.2d 432 (1945).

33 *Id.* at 987, 20 N.W.2d at 433.

34 The plaintiff in *Hutchinson v. Des Moines Housing Corp.*, 248 Iowa 1121, 84 N.W.2d 10 (1957), had pleaded two divisions of negligence in his petition. Trial court sustained three motions to strike parts of the petition under Division II, which related to the defendant's duty, and the supreme court granted an interlocutory appeal. As with the *Krausnick* decision, the basis for which appeal was granted in *Hutchinson* is quite similar to the situation plaintiff was faced with in *Bigelow*. Once again, this leads to the implication that the plaintiff in *Bigelow* had not obtained permission to appeal, and since a right to appeal from a Rule 86 adjudication was not available, the appeal was actually dismissed because permission had not been obtained to appeal.

35 246 Iowa 971, 68 N.W.2d 920 (1955).

strike allegations of the petition as to the extent of damage to the estate from decedent's death, for the reason that such allegations were irrelevant, immaterial and redundant with respect to any rights plaintiff may have had, or any obligations of the defendants which arose out of such death.[36]

Appealability under Rule 332 is perhaps best explained by *Wolf v. Lutheran Mutual Life Insurance Co.*,[37] where the supreme court analyzed the then-new rule:

> Rule 332(a) gives the supreme court, or any justice thereof, discretionary power to grant an appeal from an order not appealable as a final judgment under Rule 331, on finding that such order involves substantial rights and will materially affect the final decision and that such procedure will better serve the interests of justice. It should be liberally interpreted to the end that the interests of justice be served.[38]

The court in *Wolf* followed such a liberal interpretation in allowing an appeal from a temporary injunction. With the precedent for allowing interlocutory appeals in situations similar to *Bigelow* and with the *Wolf* proposal to liberally allow such appeals, the implication becomes even more persistent that the reason for denying appeal to the plaintiff in *Bigelow* was failure to obtain permission, rather than any opinion by the court that the order from which appeal was attempted was one which did not involve the merits or substantially affect the results. It should be recalled at this point that the necessity for permission is hinged primarily upon distinguishing the order appealed from in *Bigelow* as interlocutory, and not an order from a final judgment under Rule 86, which would allow appeal as a matter of right (thus no application for permission required).

With Division I still remaining, after defendant's motion to dismiss had been sustained as to Divisions II through V, and no responsive pleading yet filed by defendant, perhaps the explanation as to why there could be no Rule 86 adjudication in *Bigelow* is that any determination of the case at that point, based upon the pleadings, would have resulted in a ruling in favor of the plaintiff. This seems particularly true since the defendant's motion was one to dismiss the entire petition, sustained only as to Divisions II through V. Division I, in other words, which was still pending, apparently stated a cause of action sufficient to withstand a motion to dismiss, and with no answer filed, could thus result in a default judgment if nothing further were pleaded by either party.[39] Aside from such speculation, with no responsive pleading yet filed by defendant, plaintiff could, as the supreme court pointed out,[40] amend at any time, and with the record made on the ruling sustaining the motion to

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[36] *See also* Terrill v. Killion, 246 Iowa 1137, 70 N.W.2d 835 (1955), where an interlocutory appeal was granted from an order overruling a motion to strike a petition of intervention.

[37] 236 Iowa 334, 18 N.W.2d 804 (1945).

[38] *Id.* at 344, 18 N.W.2d at 810.

[39] Iowa R. Civ. P. 230.

[40] 193 N.W.2d at 522.

dismiss, such ruling would still be reviewable upon any appeal from final judgment. So to a certain extent the dismissal of plaintiff's appeal in *Bigelow* should not have interfered with the interests of justice in that other avenues of appeal would open up for the plaintiff should trial on the merits result adversely.

Whatever lessons are to be learned from *Bigelow* concerning the appealability of intermediate rulings must be gleaned from the decision. As to Rule 332, the lesson would be one repeated many times previously—that an interlocutory appeal will not be granted unless permission has been obtained to appeal. And for Rule 86 final judgments and the resulting right to appeal without the necessity for permission, the lesson seems to be that there can be no final judgment under the auspices of Rule 86 unless a party has elected to stand upon his pleadings and, in effect, suffered final judgment from a ruling on those pleadings which dispenses with matters so material to the case that there can be no further action on the trial court level in relation to those matters. A ruling dismissing a theory of relief, but leaving another basis for recovery pending under the same cause of action, does not apparently meet the Rule 86 criteria. But it should be stressed, as it has been before,[41] that it will in all likelihood still be difficult to predict when an interlocutory appeal will be granted. It should be kept in mind, as it apparently was in *Bigelow*, that the thrust of Rules 331 and 332 as to appealability is to reduce appellate review to the minimum necessary for adequate analysis for error, and therefore if a lower court ruling is one which can be reviewed upon appeal from the final judgment, thus making only one appeal necessary, an interlocutory appeal may well be denied. Such was the case in *Bigelow,* and the denial of appeal therein was at least in keeping with the main intent of Rules 331 and 332, even if the procedure of the denial seems confusing when compared with interlocutory appeals which have geen granted.

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[41] See Rendleman and Pfeffer, *Appellate Procedure and Practice,* 19 DRAKE L. REV. 74 (1969).

Civil Rights—THE IOWA CIVIL RIGHTS COMMISSION MAY ORDER PROHIBITIVE AND AFFIRMATIVE ACTION TO ELIMINATE DISCRIMINATORY PRACTICES BY LABOR UNION BUT MAY NOT AWARD COMPENSATORY DAMAGES.—*Iron Workers Local 67 v. Hart* (Iowa 1971).

The Weitz Company contracted with the federal government to construct a new post office in Des Moines. The contract required Weitz to implement a plan to employ minority workers, but the company also had a contract with Iron Workers Local 67 to provide all iron workers for Weitz. Following several incidents, including a union "sick-out" which frustrated Weitz's attempts to comply with the government contract's equal employment opportunity provisions, a construction manager and vice-president for Weitz filed a complaint with the Iowa Civil Rights Commission alleging unfair employment practices on the part of Iron Workers Local 67. The Commission attempted to conciliate with the union, but was unsuccessful. Following a public hearing on the complaint, the Commission ordered that the union be enjoined from certain conduct, that it implement affirmative action to recruit and admit minority workers to the union, that it grant union membership to one particular worker and to report monthly to the Commission, that employment tests given be submitted to the Commission for prior approval, and the Commission rendered judgment against the union for $6,000, and against its business manager personally for $1, 314.56. On review, the district court entered a decree upholding the Commission's order with the modification that the individual granted union membership be otherwise qualified, and reducing the judgment against the union to $1, 033.50, and eliminating the business manager's personal obligation. On appeal, the Supreme Court of Iowa *held, inter alia,* that the construction manager could properly bring the complaint, that procedural technicalities must be limited by the remedial purpose of the legislation, that the Commission may grant prohibitive and affirmative relief, but that it may not grant common law compensatory damages, and that the challenged provisions of the Iowa Civil Rights Act of 1965 are constitutional. *Iron Workers Local 67 v. Hart,* 191 N.W.2d 758 (Iowa 1971).

At a pre-construction meeting the union's business representative balked at efforts by the post office department's contract compliance officer to obtain cooperation in assuring utilization of minority workers on the project.[1] The compliance officer did believe, however, that a union permit would be issued to a particular black worker approximately April 1, 1969. After some insistence by the compliance officer the permit was finally granted. The same day the union's business representative talked with iron workers on the job site, and that afternoon approximately five iron workers reported they were sick, and

[1] Iron Workers Local 67 v. Hart, 191 N.W.2d 758, 762 (Iowa 1971).