

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS,

Respondent

v.

TIMOTHY MOON, ET AL.,

Appellants

DOCKET NUMBER WD73811 and WD73847

DATE: February 7, 2012

Appeal From:

Circuit Court of Jackson County, MO
The Honorable Michael W. Manners, Judge

Appellate Judges:

Division One
Alok Ahuja, P.J., Thomas H. Newton, and James Edward Welsh, JJ.

Attorneys:

George Kapke, Lee's Summit, MO

Attorney for Appellants

Attorneys:

Scott Brown, Kansas City, KS

Attorney for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS,
Respondent, v. TIMOTHY MOON, ET AL., Appellants.

WD73811 and WD73847

Jackson County

Before Division One Judges: Ahuja, P.J., Newton, and Welsh, JJ.

Moon, Jones, and Robinette were employees of MAST and members of IAFF, the union serving as the exclusive bargaining agent for MAST employees. In 2006, Moon, Jones, Robinette and other MAST employees formed a new union and petitioned to become the new bargaining agent. IAFF filed internal charges against participating MAST employees for creating the rival union and after an internal hearing, ordered each of the charged MAST employees to pay a fine of \$8,820.48 for costs that IAFF incurred in defending against the new union. IAFF subsequently filed a petition in circuit court, seeking judicial enforcement of the fines. The trial court granted summary judgment in favor of IAFF. Moon, Jones and Robinette appeal.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

Division One Holds:

Moon, Jones, and Robinette (“MAST Employees”) contend the trial court erred in granting summary judgment because their right to organize a labor union was guaranteed by Missouri statutory and Constitutional law; IAFF’s petition was deficient; and they were denied their rights to judicial review of the fines.

The relationship between a union and its members is contractual. Because the constitution and by-laws of IAFF constitute the terms of the contract, unions may resort to courts for enforcement of disciplinary provisions provided for under those terms. The MAST Employees were not required to be members of the union, and thus voluntarily chose to be bound by the internal disciplinary procedures. Consequently, the trial court’s finding does not conflict with the guarantees under Missouri law that employees shall have the right to representation of their own choosing.

The MAST Employees further argue that IAFF’s petition was deficient in that it did not allege that it performed its contract with the MAST Employees. We find the pleading was sufficient to allege IAFF’s performance of the contract.

The MAST employees additionally contend that their constitutional rights to freedom of speech, association, and assembly were violated. We reject this argument because IAFF is not a state actor under these facts. We further reject the MAST Employees’ argument that *Shelley v. Kramer*, 334 U.S. 1 (1948) bars judicial enforcement of the fines because we have not found the levy of the fines to be unconstitutional.

Finally, the MAST Employees contend that the trial court's summary judgment denied them the opportunity to challenge the reasonableness of the fines. For the fines to be reasonable, IAFF was required to show that it sustained damages in the amounts of the fines assessed by the trial board. IAFF was not entitled to summary judgment of \$8,820.48 against each MAST employee. The fines levied appear to represent expenses incurred by the union both before and after the dates of the charged misconduct. It further appears that Jones and Robinette were assessed fines for IAFF's expenses after they withdrew from the union. IAFF did not meet its burden to establish that it was entitled to judgment as a matter of law. Thus, we remand the determination of reasonable fines to the trial court.

Opinion by Thomas H. Newton, Judge

February 7, 2012

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