

United States Court of Appeals
For the Eighth Circuit

No. 15-1620

Cellular Sales of Missouri, LLC

Petitioner

v.

National Labor Relations Board

Respondent

Labor Law Scholars

Amicus on Behalf of Respondent

No. 15-1860

Cellular Sales of Missouri, LLC

Respondent

v.

National Labor Relations Board

Petitioner

Labor Law Scholars

Amicus on Behalf of Petitioner

National Labor Relations Board
Board Case No. 14-CA-094714

JUDGMENT

Before WOLLMAN, MELLOY, and COLLOTON, Circuit Judges.

THIS CAUSE came to be heard upon a petition filed by Cellular Sales of Missouri, LLC to review, and upon a cross-application for enforcement filed by the National Labor Relations Board to enforce, an Order of the National Labor Relations Board in Board Case No. 14-CA-094714, reported at 362 N.L.R.B. No. 27 (March 16, 2015). The Court heard the arguments of the parties and has considered the briefs and agency record filed in this cause. On June 2, 2016, the court handed down its opinion granting in part Cellular Sales’s petition and granting in part the Board’s cross-application.

On June 16, 2016, the Board filed its proposed judgment with this court. Cellular Sales objected to the Board’s proposal and filed its own proposed judgment for our consideration on June 27, 2016. Although the Board has “broad discretion to devise remedies that effectuate the policies of the [National Labor Relations] Act,” Pace Indus., Inc. v. NLRB, 118 F.3d 585, 593 (8th Cir. 1997) (quoting Sure-Tan, Inc. v. NLRB, 467 U.S. 883, 898-99 (1984)), that discretion is not without limits, see NLRB v. Dist. 50, United Mine Workers, 355 U.S. 453, 458 (1958). Rather, the Board’s discretion “is contained by the requirement that the remedy shall be appropriate and . . . adapted to the situation which calls for redress.” Id. (quotation marks and citations omitted). The Board’s choice of “remedy will be enforced ‘unless

it can be shown that the order is a patent attempt to achieve ends other than those which can fairly be said to effectuate the policies of the Act.” Pace Indus., Inc., 118 F.3d at 593 (quoting Va. Elec. & Power Co. v. NLRB, 319 U.S. 533, 540 (1943)).

We accept the Board’s proposed judgment, with modifications, as an appropriate remedy to Cellular Sales’s violation. The proposal would require Cellular Sales to notify any employee who was required to sign the arbitration agreement in the 2012 Compensation Schedule that the agreement has been revised or rescinded. Because not all employees who signed the agreement remain subject to its terms, we modify the proposal to require Cellular Sales to notify only those employees who remain subject to the arbitration agreement in the 2012 Compensation Schedule that the agreement does not limit or preclude their rights to file unfair-labor-practice charges with the Board or to access the Board’s processes. The proposal also would require Cellular Sales to post a notice of the violation at all facilities in Kansas and Missouri. We modify the proposal to require Cellular Sales to post notice only at facilities where employees who remain subject to the 2012 Compensation Schedule are currently employed.

The proposal would also require Cellular Sales to rescind or revise the mandatory and binding arbitration agreement in all of its forms. But because the mandatory and binding arbitration agreement at issue here was set forth in the 2012 Compensation Schedule, we modify the proposal to require Cellular Sales to rescind or revise that agreement. See Sure-Tan, Inc. v. NLRB, 467 U.S. 883, 900 (1984) (“[The Board’s] remedy must be sufficiently tailored to expunge only the actual, and not merely speculative, consequences of unfair labor practices.”). Accordingly, we modify as set forth herein and in conformity therewith, it is hereby

ORDERED AND ADJUDGED by the United States Court of Appeals for the Eighth Circuit that Cellular Sales of Missouri, LLC’s petition for review of the

Board's decision invalidating the mandatory arbitration agreement's waiver of class or collective procedures in all forums is GRANTED. It is further

ORDERED AND ADJUDGED that the National Labor Relations Board's cross-application for enforcement of the Board's Order finding that the mandatory arbitration agreement violated Section 8(a)(1) of the Act, because it could be reasonably construed as prohibiting employees from filing unfair-labor-practice charges with the Board, is ENFORCED.

Accordingly, Cellular Sales of Missouri, LLC, its officers, agents, successors, and assigns, shall:

1. Cease and desist from

(a) Maintaining a mandatory and binding arbitration agreement that employees reasonably would believe bars or restricts employees' rights to file charges with the National Labor Relations Board or to access the Board's processes.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind or revise the mandatory and binding arbitration agreement in the 2012 Compensation Schedule to make clear to employees that the arbitration agreement does not restrict employees' rights to file charges with the National Labor Relations Board or to access the Board's processes.

(b) Notify all current and former employees who remain subject to the arbitration agreement in the 2012 Compensation Schedule does not limit or

preclude their rights to file unfair-labor-practice charges with the National Labor Relations Board or to access the Board's processes.

(c) Within 14 days after service by the Region, post copies of the attached notice marked "Appendix" at any facility in Missouri and Kansas where any employee who remains subject to the arbitration agreement in the 2012 Compensation Schedule is currently employed. Copies of the notice, on forms provided by the Regional Director for Region 14, Subregion 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice marked "Appendix" to all current and former employees who remain subject to the arbitration agreement in the 2012 Compensation Schedule.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 14, Subregion 17, a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

August 10, 2016

Order Entered at the Direction of the Court
Clerk, U.S. Court of Appeals, Eighth Circuit

/s/ Michael E. Gans

APPENDIX
NOTICE TO EMPLOYEES
POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES
COURT OF APPEALS ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain a mandatory and binding arbitration agreement that our employees reasonably would believe bars or restricts their right to file charges with the National Labor Relations Board or to access the Board's processes.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind or revise the mandatory and binding arbitration agreement in the 2012 Compensation Schedule to make clear that the arbitration agreement does not restrict your right to file charges with the National Labor Relations Board or to access the Board's processes.

WE WILL notify all current and former employees who remain subject to the mandatory arbitration agreement in the 2012 Compensation Schedule that it does not limit or preclude their rights to file unfair-labor-practice charges with the National Labor Relations Board or to access the Board's processes.

CELLULAR SALES OF MISSOURI, LLC

The Board's decision can be found at www.nlr.gov/case/14-CA-094714 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273.1940.

