UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

THE PURPLE EAGLE LLC
d/b/a THE VIDEO GAME CAVERN

and **Case No.: 10–CA–343133**

ROMULUS ELIJAH LOFINK

Sophia Tilsen, Esq. and Kurt J. Brandner, Esq., for the General Counsel.
Adrienne Tauscheck, Esq., for the Respondent.

DECISION

STATEMENT OF THE CASE

JEFFREY P. GARDNER, Administrative Law Judge. On May 24, 2024, Charging Party Romulus Elijah Lofink filed an unfair labor practice charge against The Purple Eagle LLC d/b/a The Video Game Cavern, docketed by Region-10 of the Board as case 10-CA-343133. The within Complaint issued on August 8, 2025. (GC Exh. 1(a)).[1]

In substance the General Counsel alleges that Respondent violated Section 8(a)(1) of the Act by maintaining an unlawful rule in the form of an overbroad nondisclosure agreement, and by unlawfully terminating its employee, Romulus Elijah Lofink, in retaliation for and in order to, discourage others from engaging in protected concerted activity.

A trial was conducted in this matter on Tuesday, December 9, 2025, in Travelers Rest, South Carolina. At the hearing, the General Counsel moved to amend paragraph 4 of the complaint to reflect the entirety of the objected-to nondisclosure agreement. That amendment was granted.

At trial, the General Counsel called Romulus Lofink and employee Tiffany Shoptaugh as witnesses. Respondent cross-examined both of the General Counsel's witnesses, and called its general manager, Paul Andrew Case, its assistant manager, Daniel Caddell, and its owner, Robert Potts, as witnesses, each of whom was cross-examined by the General Counsel. The parties also offered a series of stipulations and joint exhibits in addition to their own respective exhibits.

Counsel for the General Counsel and the Respondent each filed post-trial briefs in support of their respective positions on January 13, 2026.

[1] Abbreviations used in this decision are as follows: "Tr." for the transcript, "GC Exh." for the General Counsel's exhibits, "R Exh." for Respondent's Exhibits, and "Jt Exh." for Joint exhibits. Specific citations to the transcript and exhibits are included only where appropriate to aid review and are not necessarily exclusive or exhaustive.

Upon consideration of the entire record and the Briefs filed, I make the following findings, conclusion of law, and recommendations:

FINDINGS OF FACT

I. JURISDICTION

Based on the pleadings and stipulated facts, I find at all material times, The Purple Eagle LLC d/b/a The Video Game Cavern, has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Based on the foregoing, I find that this dispute affects commerce and that the Board has jurisdiction of this case, pursuant to Section 10(a) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The Respondent operates a retail enterprise in Taylors, South Carolina, known locally as “The Video Game Cavern” that buys, sells and trades video games. Robert Potts took over ownership of the store in January 2024. At the time of the events at issue, the store was operating with five employees: a general manager, Paul Andrew Case, an assistant manager, Daniel Caddell, and three sales associates, including the Charging Party, Romulus Lofink. Case had been hired by Potts shortly after he purchased the business. Potts, Case and Caddell were all admitted to be supervisors and agents of Respondent under the Act.

Lofink began working for Respondent in September 2022, as a sales associate, prior to Potts’s purchase of the store. His primary duties were to stock inventory, work the register, deal with trade-ins and repair consoles. At the time he was hired, Lofink was not required to sign a nondisclosure agreement. Thereafter, when Robert Potts became Respondent’s owner in January 2024, he required all employees to sign a nondisclosure agreement as a condition of continued employment. Lofink signed the agreement.

The parties stipulated that the Employee Nondisclosure Agreement maintained by Respondent contained the following provisions:

1. **Company’s Trade Secrets**

In the performance of employee’s job duties with Company: Employee will be exposed to Company’s confidential information. “Confidential information” means information or material that is commercially valuable to Company and not generally known or readily ascertainable in the industry. This includes, but is not limited to:

(a) information concerning Company's business, including cost information, profits, sales information, accounting and unpublished financial information, business plans, markets and marketing methods, customer lists and customer information, purchasing techniques, supplier lists and supplier information and advertising strategies;

(b) information concerning Company's employees, including salaries, strengths, weaknesses, and skills;

(c) information submitted by Company's customers, suppliers, employees, consultants or co-venture partners with Company for study, evaluation or use; and

(d) any other information not generally known to the public which, if misused or disclosed, could reasonably be expected to adversely affect Company's business.

2. Nondisclosure of Trade Secrets
The Employee shall keep Company's Confidential Information, whether or not prepared or developed by Employee, in the strictest confidence. The Employee will not disclose such information to anyone outside Company without Company's prior written consent. Nor will Employee make use of any Confidential Information for Employee's own purposes or the benefit of anyone other than Company.

(Employee Nondisclosure Agreement (NDA), Joint Exh. 4).

The NDA does not include any mention of the NLRA or employee Section 7 rights, or any disclaimer clarifying what information employees retain the right to disclose for purposes of advancing their Section 7 rights under the Act.

Within a few months after Case was hired, in or about early May 2024, Lofink came to believe that Case was not performing well as the general manager. For example, Lofink testified that Case repeatedly failed to keep track of how much people were paying for their games, which made it difficult for the other employees to conduct accurate transactions with customers. Lofink also testified that Case regularly failed to label the condition of inventory properly, which resulted in other employees having difficulty finding the correct items when customers were asking for them.

In addition to his concerns about Case's work, Lofink also was bothered by what he believed to be Case's compensation. In early to mid-January, Case had remarked to Lofink that he had taken a pay cut to come work for Respondent, a $30,000 pay cut from a prior job making $110,000. Caddell later confirmed in a conversation with Lofink that Case was making $80,000 working for Respondent.

Lofink discussed his concerns about Case with assistant manager Caddell as well as with his co-workers Tiffany Shoptaugh and Kayla Bridwell. One conversation Lofink had with Shoptaugh took place in February 2024 in the back of the store while Caddell was also present. In that conversation, Shoptaugh was complaining about getting frustrated with working with Case because she felt like she was doing all the work while Case was on his phone ignoring customers. Lofink responded by telling Shoptaugh he understood and the two discussed bringing it up at some point to Potts.

On at least one occasion, Lofink confronted Case directly about the need to properly mark the inventory, but Case seemed to dismiss the concerns as not important. Lofink also raised his concern about Case's performance to Potts, but was likewise met with no resolution, or change in performance on Case's part.

Lofink and Shoptaugh continued having conversations about Case's performance regularly, sometimes including Kayla Bridwell, and Caddell was typically present as well. These conversations took place about once every week or two during the period February through May 2024. These included conversations in which the employees talked about Case's compensation, which compounded their frustration with what they saw as his poor performance.

Some of the conversations took place in the back room of the store, but they also frequently occurred on the sales floor. Shoptaugh did not remember having discussions in front of customers, but Lofink acknowledged that did happen sometimes, as did conversations about various personal topics being discussed on the sales floor among the employees.

Lofink testified that he, Shoptaugh and Bridwell also openly discussed their own compensation, as well as that of Caddell, who was actually making less than Lofink, despite his role as assistant manager. Shoptaugh did not remember discussing anyone's compensation other than Case's. But, they both testified that they discussed Case's performance and his compensation, and that they believed that the salary was too high considering their view of his performance.

In early May 2024, Potts ran into some regular customers of the store while on a shopping errand, and after exchanging pleasantries, the customers remarked to Potts that they were surprised at how much he was able to pay Case.[2] When Potts inquired where they had heard about Case's pay, the customers reportedly told Potts that they overheard Lofink talking about it while they were in Respondent's store, and that Lofink was also speaking negatively about Case's work performance.

Upon learning this information, Potts conducted a brief investigation by speaking with Case, who then spoke to Caddell about what he knew about Lofink's talking about Case's salary and performance. Caddell told Case that he had heard Lofink talking about Case's salary and performance, and Case reported that information back to Potts. The investigation did not include questioning Lofink.

On May 13, 2024, Potts confronted Lofink with what he said was a customer complaint about Lofink disparaging Case by saying Case made $100,000 per year, that he did not do his job well, and that he was on his phone too much. In that meeting, in which Case and Caddell were also present, Potts asked Lofink how he knew Case's salary, and Case told Potts that both Case and his assistant manager, Caddell, had told him. Potts then advised Lofink that his conduct violated Section 1(b) of the NDA, and gave him the choice to resign or be fired.

In that moment, Lofink told Potts he was resigning. However, the next day, May 14, 2024, Lofink returned and asked to be discharged instead. Respondent provided Lofink with a discharge letter with the subject line: "Immediate Termination for NDA Breach" which stated that Respondent was "terminating our agreement effective immediately due to your breach of the NDA dated 1/3/2024. You disclosed confidential information in violation of section 1 – b." (Joint Exh. 5).

A few days after Lofink was terminated, Respondent held a meeting for all of the remaining employees, Shoptaugh, Bridwell, Caddell, Case and Potts. Potts was the primary speaker at the meeting. Potts advised that Lofink had been terminated for violating an NDA by discussing Case's wages.

Thereafter, Lofink filed for unemployment benefits, and a telephone hearing was conducted under oath by the South Carolina Department of Employment and Workforce. The parties stipulated to the transcript of that telephone hearing.[3] In that hearing, Respondent owner Potts confirmed in his testimony that Lofink was discharged for violating the Nondisclosure

[2] The customers were not identified by name and did not testify at the hearing.

[3] The parties agreed there were certain mistakes in the transcript of that telephone hearing, and disputed the language of one portion, but of those mistakes or disagreements affect my decision in this case.

Agreement, specifically for violating section 1, paragraph B by discussing "other employees' salary, skills, or weaknesses." (Jt. Exh. 3 at p. 18).

Potts testified in that unemployment hearing that his understanding of the law was that employees may speak about their own pay, but that "you never have a right to discuss anyone else's pay." (Jt. Exh. 3 at p. 50). When asked at the within hearing about that statement, he stated that what he meant was that "you don't have the right to make up someone else's salary." (Tr. at p. 104).

Lofink's unemployment benefits claim was denied.

III. CREDIBILITY DETERMINATIONS

My factual findings set forth above are based on my observations of witnesses' testimonial demeanor.[4] I found Romulus Lofink to be a credible witness. He was straightforward in his testimony, with a solid recollection of detailed facts. He did not hesitate to acknowledge facts that could be perceived as negative, and his demeanor remained the same during cross-examination.

I found Tiffany Shoptaugh to be inconsistent in her testimony.[5] I note that she had voluntarily separated from employment around the same time Lofink was terminated and had much less detailed recollection of her time with Respondent. While she had a firm recollection of having had conversations with Lofink about Case, and of once having had a belief as to Case's performance and as to what Case was earning, she struggled to recall many details other then general broad strokes.

Paul Andrew Case was a mostly credible witness in his brief testimony. He denied ever talking to Lofink about his salary, though notably he neither confirmed nor denied whether Lofink's belief as to his salary was accurate. His recollection of his participation in the investigation of Lofink's communications about his salary was vague, but he did not present as antagonistic toward Lofink despite the criticisms of him attributed to Lofink.

Daniel Caddell appeared less credible. His answers tended to ramble when asked about specifics. He also appeared defensive while testifying about his prior friendship with Lofink and his acknowledgement of their conversations about Case's salary, denying that he had ever told Lofink about Case's salary but apparently incurious as to where his then-friend may have gotten that information.

I found Robert Potts to be a mostly credible witness. His memory of the events was solid, without sounding rehearsed. And he testified with seeming candor about his interaction with the customers he encountered. However, he was not credible when he sought to hedge his earlier sworn testimony given in Lofink's unemployment hearing about his understanding of the law regarding an employee's right to discuss salaries. His explanation was inconsistent with his

[4] Where credibility resolution is not based on observations of witnesses' testimonial demeanor, the choice between conflicting testimonies rests on the weight of the evidence, established or admitted facts, inherent probabilities, and reasonable inferences drawn from the record as a whole. *Taylor Motors, Inc.*, 366 NLRB No. 69 slip op. 1 at fn. 3 (2018); *Lignotock Corp.*, 298 NLRB 209 at fn. 1 (1990).

[5] With the consent of all parties, former employee Shoptaugh testified remotely via Zoom from her home in Seattle, WA.

prior testimony, and he appeared to know that what he had said was problematic, but his attempt to distinguish it was not credible.

ANALYSIS

A. Respondent violated 8(a)(1) of the Act by maintaining an unlawful nondisclosure agreement.

In *Stericycle, Inc*., 372 NLRB No. 113 (2023), the Board set forth the standard for deciding whether an employer's work rule is facially unlawful under Section 8(a)(1) of the Act.[6] In doing so, the Board maintained certain overarching principles, including that the test for evaluating whether an employer's conduct or statements violate Section 8(a)(1) is whether "they have a reasonable tendency to interfere with, restrain, or coerce employees who may engage in activities protected by Section 7." *Id*. at p. 8. The General Counsel bears the initial burden of establishing a violation of the Act. *Id.*

In evaluating a disputed rule in the first instance, the Board interprets the rule "from the perspective of an economically dependent employee who contemplates engaging in Section 7 activity," recognizing that such employees "ordinarily do not wish to risk their jobs by violating their employers' rules." *Id*. Such employees are, therefore, "readily inclined to interpret it more broadly to restrict or prohibit Section 7 activity than a disinterested observer might." *Id.* at p. 9.

Accordingly, when assessing a disputed work rule, the Board likewise interprets it more broadly to restrict or prohibit Section 7 activity. "If an employee could reasonably interpret a rule to restrict or prohibit Section 7 activity, the General Counsel has satisfied [its] burden and demonstrated that the rule is presumptively unlawful." *Id.* This remains so "even if the rule could also reasonably be interpreted *not* to restrict Section 7 rights and even if the employer did not intend for its rule to restrict Section 7 rights." *Id*. at 10.

If the General Counsel establishes that the rule is presumptively unlawful, the burden is on the employer to rebut that presumption by showing that the rule "advances a legitimate and substantial business interest and that the employer is unable to advance that interest with a more narrowly tailored rule." *Id.*

Here, I find that the General Counsel has met its initial burden of showing that Respondent's nondisclosure agreement is presumptively unlawful, and that Respondent has not rebutted that presumption by showing that its nondisclosure agreement advances a legitimate and substantial interest that could not be advanced with a more narrowly tailored rule.

The nondisclosure agreement broadly prohibits employees from disclosing confidential information "to anyone outside the Company without Company's prior written consent." (Jt. Exh. 4, Section 2). The prohibition goes on to bar "the use of any Confidential Information for Employee's own purposes or the benefit of anyone other than Company." Section 1(b) of the agreement, which Respondent relied on to discharge Lofink, defines "Confidential Information" in part as "information concerning Company's employees, including salaries, strengths, weaknesses, and skills."

This language is extremely broad and encompasses multiple potential areas that employees have Section 7 rights to discuss not only just with each other, but also with a Union,

[6] The *Stericycle* decision overturned the Board's decision in Boeing Co., 365 No. 154 (2017).

or the media, both of which a reasonable employee could view as prohibited by the agreement. For example, as the General Counsel correctly notes, wage discussions are inherently concerted activity because wages are a “vital term and condition of employment” and the “grist on which concerted activity feeds.” Aroostook County Regional Ophthalmology Center, 317 NLRB 218, 220 (1995). But an employee reading the NDA could reasonably assume it would prohibit something as plainly protected as discussing employee salaries with a Union.

Other examples of protected activity that a reasonable employee could view as prohibited by the nondisclosure agreement’s ban on disclosure of the Company’s employees’ strengths, weaknesses, and skills could include bringing to a Union or the media complaints about working conditions, facilities, hours and training. All of these are terms and conditions of employment that employees have a Section 7 right to discuss.

Accordingly, I find that the General Counsel has met its burden to show that the agreement is presumptively unlawful, and the burden shifts to Respondent to rebut that presumption by showing the nondisclosure agreement advances a legitimate and substantial interest that could not be advanced with a more narrowly tailored rule.

Respondent’s proffered legitimate and substantial interest that it maintains is advanced by its NDA is to safeguard confidential and proprietary information to prevent competitive harm. It offered brief testimony suggesting that certain pricing information and other proprietary business information had previously been shared with former clients who proceeded to open a competing video game store in a neighboring town. Respondent did not put forth an argument about why this purported interest could not be advanced with a more narrowly tailored rule.

Even assuming, however, that Respondent has a legitimate and substantial interest in keeping certain information private from competitors or others, those interests were not narrowly tailored here. The NDA does not include any mention of the NLRA or employee Section 7 rights, or any disclaimer clarifying what information employees retain the right to disclose for purposes of advancing their Section 7 rights under the Act. In the absence of any such disclaimer, it cannot be said that Respondent’s interests could not have been advanced with a more narrowly tailored rule.

As such, I find that Respondent promulgated and has maintained an unlawful rule requiring employees to sign an overbroad nondisclosure agreement in violation of Section 8(a)(1) of the Act.

B. Respondent violated 8(a)(1) of the Act on 5/14/2024 by unlawfully terminating Romulus Elijah Lofink for violating its unlawful nondisclosure agreement.

Having found that Respondent’s NDA was unlawfully overbroad, I further find that Respondent violated Section 8(a)(1) of the Act by terminating Lofink for violating that unlawful agreement. In *Continental Group, Inc.,* 357 NLRB 409 (2011), the Board held that discipline imposed pursuant to an unlawful rule violates the Act when an employee violates the rule by “(1) engaging in protected conduct or (2) engaging in conduct that otherwise implicates the concerns underlying Section 7 of the Act.” *Id.* at 412.

Here, it is undisputed that Respondent relied on the nondisclosure agreement, and specifically Section 1(b) of the agreement, as the basis for its termination of Lofink. Potts told Lofink that was the reason, Lofink’s termination letter said that was the reason, Potts told other employees a week after Lofink's discharge that was the reason, and Respondent maintained that was the reason in its defense of Lofink's unemployment claim.

While Respondent attempts to make the argument in its brief that Lofink was terminated for "making false statements to customers about [Case]'s salary and for publicly disparaging [Case]'s value to the organization," (R. Br. at p. 7), that had not been the stated impetus for the termination at any point in the events surrounding his termination.

Moreover, to the extent Respondent argues that it was justified in terminating Lofink because he made false statements about his supervisor's salary, it is missing a critical element of such a claim. At no point was Case's actual salary provided to demonstrate that Lofink's assertions were in fact false. Respondent cannot now claim to have terminated Lofink for making false statements when there is no proof that any statement made by him was false, let alone "knowingly false" as Respondent asserts.

As such, I find that Respondent unlawfully terminated its employee, Romulus Lofink, for violating its unlawful rule in violation of Section 8(a)(1) of the Act.

C. Respondent violated 8(a)(1) of the Act on 5/14/2024 by unlawfully terminating Romulus Elijah Lofink in retaliation for his concerted protected activity, and Respondent has not met its *Wrightline* burden.

In *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980), enfd. 662 F.2d 889 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 399-403 (1983), the Board set forth its causation test for cases alleging violations of the Act turning on employer motivation.[7] First, the General Counsel must make an initial prima facie showing sufficient to support the inference that protected conduct was a "motivating factor" in the employer's decision. *Wright Line*, 251 NLRB at 1089. See *Coastal Sunbelt Produce, Inc. & Mayra L. Sagastume*, 362 NLRB No. 126, slip op. at 1 (2015).

Establishing unlawful motivation requires proof that: "(1) the employee engaged in protected activity; (2) the employer was aware of the activity; and (3) the animus toward the activity was a substantial or motivating reason for the employer's action." *Consolidated Bus Transit, Inc*., 350 NLRB 1064, 1065 (2007), enfd. 577 F.3d 467 (2d Cir. 2009).

If the General Counsel makes that showing, the burden shifts to the employer to "demonstrate that the same action would have taken place even in the absence of the protected conduct." *Wright Line*, 251 NLRB at 1089. See also *Septix Waste, Inc.,* 346 NLRB 494, 496 (2006). An employer "cannot simply present a legitimate reason for its action but must persuade by a preponderance of the evidence that the same action would have taken place even in the absence of the protected activity." *W.F. Bolin Co.*, 311 NLRB 1118, 1119 (1993).

Here, Lofink's statement in front of customers about Case's salary and his assessment of Case's performance did not happen in isolation. He frequently engaged in protected activity, regularly speaking with his co-workers about Case's performance and its impact on their own work. These conversations often took place in the presence of or sometimes even directly with Caddell, an admitted supervisor and agent of Respondent. After discussing it with Shoptaugh,

[7] The Board has since clarified that the *Wright Line* test remains unchanged. *Intertape Polymer Corp*., 372 NLRB No. 133 (2023).

Lofink also approached Case himself about his performance and expressed how it impacted the other employees.

Respondent argues that Lofink's statements and conduct were not about improving working conditions, but rather, were only aimed at humiliating or discrediting his supervisor. However, Lofink spoke numerous times with his co-workers about Case's performance and how it impacted their work, agreed on a plan to confront Case about it, and in fact, spoke with Case about the need to properly catalog items so as not to negatively impact other workers. That is squarely within the definition of protected concerted activity. And there can be no question that Respondent had knowledge of that activity. Therefore, the first two elements of *Wright Line* are clearly met.

As for whether there was animus toward the activity that was a substantial or motivating reason for the employer's action, the evidence is again unambiguous. Throughout the events in this case, Respondent has repeatedly maintained that it discharged Lofink for speaking with employees about Case's salary and making disparaging remarks about Case's work, statements which I have found to be protected activity. Accordingly, the third *Wright Line* element is also met.

Having met all three elements - protected activity, knowledge, and animus motivating Lofink's discharge - I find that General Counsel has met its prima facie burden that the discharge was unlawful. With the burden shifted to Respondent to demonstrate that it would have taken the same action even in the absence of protected conduct, I find that Respondent has failed to meet its burden.

Indeed, Respondent did not put forward an argument that something other than Lofink's protected activity was the reason for his termination. There was some testimony that Lofink used swear words when describing his opinion of Case, which Lofink denied. However, it was not disputed that using swear words was common practice among the employees, including on the sales floor. To the extent Respondent argues that the swear words used by Lofink were the real reason for his termination, and that he would have been terminated in the absence of his protected activity, I find that not to be the case.

Moreover, as addressed above, Respondent's argument that Lofink's statements about his supervisor's salary were allegedly false so as to remove his protections under the Act is not supported by Board law. The Board has long held that false statements lose the Act's protection only if "knowingly false or made with reckless disregard for their truth or falsity." *Valley Hospital Medical Center*, 361 NLRB 1250, 1252 (2007). Here, Respondent has not even proven that Lofink's statement was false, and no evidence was presented to suggest that Lofink knew it to be false.

Likewise, Respondent's argument that Lofink's remark about his supervisor's performance disparaged him in a way that would remove his protections under the Act is also not supported by Board law. Again, the Board has long held that the use of profanity, including in reference to supervisors, does not by itself lose the protection of the Act. *Pier Sixty, LLC*, 362 NLRB 505 (2015). This is especially true when the profanity is used, as here, in the context of protected concerted activity.

Accordingly, I find that Respondent failed to demonstrate that it would have terminated Lofink in the absence of his protected activity, and therefore, that it unlawfully terminated its employee, Romulus Lofink, in retaliation for his protected concerted activity in violation of Section 8(a)(1) of the Act.

Conclusions of Law

1. The Respondent, The Purple Eagle LLC d/b/a The Video Game Cavern, is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. Since January 3, 2024, Respondent has been violating Section 8(a)(1) of the Act by maintaining an unlawful rule requiring employees to sign an overbroad nondisclosure agreement.

3. Respondent violated Section 8(a)(1) of the Act on May 14, 2024, by discharging its employee, Romulus Lofink, for violating its unlawful nondisclosure agreement.

4. Respondent violated Section 8(a)(1) of the Act on May 14, 2024, by discharging its employee, Romulus Lofink, in retaliation for his protected concerted activity.

5. The unfair labor practices committed by the Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

Remedy

As I have concluded that the Respondent engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent, having unlawfully maintained an overbroad nondisclosure agreement, shall rescind the rule requiring employees to enter into the agreement as currently written, and make Romulus Lofink whole for any loss of earnings and other benefits suffered as a result of its enforcement of its unlawful rule.

Backpay shall be computed in accordance with *F. W. Woolworth Co.,* 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB 6 (2010). Consistent with *Thryv, Inc.*, 372 NLRB No. 22, slip op. at 14 (2022), Respondent shall also compensate Romulus Lofink for any other direct or foreseeable pecuniary harms incurred as a result of the unlawful discharge, including reasonable search-for-work and interim employment expenses, if any, regardless of whether these expenses exceed interim earnings. Compensation for those harms shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

In addition, the Respondent shall compensate Romulus Lofink for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 10, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years, in accordance with *AdvoServ of New Jersey, Inc.,* 363 NLRB 1324 (2016). In accordance with *Cascades Containerboard Packaging–Niagara*, 370 NLRB No. 76 (2021), as modified in 371 NLRB No. 25 (2021), the Respondent shall also be required to file with the Regional Director for Region 10 a copy of each backpay recipient's corresponding W–2 form reflecting the backpay award.

The Respondent shall post an appropriate informational notice, as described in the attached appendix. This notice, on a form provided by the Regional Director for Region 10, 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, the Respondent shall distribute the notice electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notice is not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed its facility, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at the facility at any time **January 3, 2024**.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[8]

Order

The Respondent, The Purple Eagle LLC d/b/a The Video Game Cavern, its officers, agents, and representatives, shall

1. Cease and desist from:

(a) Maintaining an unlawful rule requiring employees to sign an overbroad nondisclosure agreement that restricts employees in the exercise of their Section 7 rights.

(b) Discharging or otherwise discriminating against any employee who violates its unlawful nondisclosure agreement;

(c) Discharging or otherwise discriminating against any employee because they engage in protected concerted activities, or to discourage other employees from engaging in these activities;

(d) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act

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

(a) Rescind the unlawful nondisclosure agreement that unlawfully prohibits employees from engaging in activity protected by federal law, and within 3 days thereafter, furnish

[8] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes due under the terms of this Order.

employees with written confirmation that the unlawful nondisclosure agreement has been rescinded.

(b) Within 14 days from the date of the Board's Order, offer Romulus Lofink full reinstatement to his former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(c) Make Romulus Lofink whole for any loss of earnings and other benefits, and for any other direct or foreseeable pecuniary harms suffered as a result of the discrimination against him, in the manner set forth in the remedy section of the decision, plus reasonable search-for-work and interim employment expenses regardless of whether those expenses exceed his interim earnings.

(d) Compensate Romulus Lofink for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 10, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years, along with Romulus Lofink's corresponding W-2 form(s) reflecting the backpay award.

(e) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharge, and within 3 days thereafter notify Romulus Lofink in writing that this has been done and that neither the suspension nor the discharge will be used against him in any way.

(f) Preserve, and within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its facility in Taylor, South Carolina the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the Regional Director for Region 10 after being signed by the Respondent's authorized representatives, 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 the physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 3, 2024.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 10 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.

Dated, Washington, D.C. this July 10, 2026

Jeffrey P. Gardner
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES
Posted by 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 a representative 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 an unlawful work rule that requires employees to enter into an overbroad nondisclosure agreement that restricts their Section 7 rights.

WE WILL NOT discharge or otherwise discriminate against any of you for violating an unlawful nondisclosure agreement.

WE WILL NOT discharge or otherwise discriminate against any of you for engaging in protected concerted activities.

WE WILL make Romulus Lofink whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest, and **WE WILL** also make him whole for any other direct or foreseeable pecuniary harms, suffered as a result of the unlawful discharge, including reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Romulus Lofink for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and **WE WILL** file with the Regional Director for Region 10 within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s).

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Romulus Lofink, and **WE WILL**, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

WE WILL rescind the unlawful nondisclosure agreement that unlawfully prohibits you from engaging in activity protected by federal law, and **WE WILL**, within 3 days thereafter, furnish you with written confirmation advising you that your unlawful nondisclosure agreement has been rescinded.

The Purple Eagle LLC d/b/a The Video Game Cavern
(Employer)

Dated: ____________________ By: ______________________________
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation, and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

401 W. Peachtree Street, N.W., Suite 2201,
Atlanta, GA 30308
(404) 331-2896, Hours: 8:00 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/10-CA-343133 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 SE, Washington, DC 20570-0001, or by calling (202) 273–1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (470) 343-7498.