

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 17**

**RUSSELL NELSON, INC.**

**and**

**Case 17-CA-025175**

**OPERATIVE PLASTERS AND CEMENT  
MASONS LOCAL UNION NO. 538**

**MOTION TO TRANSFER PROCEEDING TO BOARD  
AND FOR DEFAULT JUDGMENT**

Counsel for the Acting General Counsel, pursuant to the provisions of Section 102.56 of the Rules and Regulations of the National Labor Relations Board, Series 8, as amended, files this Motion requesting that the National Labor Relations Board (Board) issue an Order transferring Case 17-CA-025175 to the Board, and, further moves that the Board issue an Order Granting Default Judgment sustaining all the allegations of the Compliance Specification issued herein. In support of this Motion, Counsel for the Acting General Counsel states as follows:

1. On November 2, 2011, the Board issued a Decision and Order reported at 357 NLRB No. 107 (November 2, 2011). In its decision, the Board found that Russell Nelson, Inc. (Respondent) violated Sections 8(a)(1) and (5) of the National Labor Relations Act (Act), and directed Respondent to, *inter alia*, take the following actions to remedy its unfair labor practices: 1) make bargaining unit employees whole by paying them the unpaid wages for the hours they worked under the May 10, 2011 collective-bargaining agreement; and 2) make the bargaining unit employees whole

for any loss of earnings and other benefits suffered as a result of Respondent's unlawful conduct. The Board ordered that backpay be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6<sup>th</sup> Cir. 1971), with interest as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (October 22, 2010).

2. On February 24, 2012, the Regional Director for Region 17 issued a Compliance Specification and Notice of Hearing in Case 17-CA-025175, liquidating the amounts owed by Respondent under the remedy found by the Board. The Compliance Specification and Notice of Hearing was served by certified mail on Respondent on the same date at the following address: 12120 State Line Road #314, Leawood, Kansas 66209 (Certified Number 7009 2250 0002 6822 3118), which is the last known address for Respondent. In the Compliance Specification paragraph titled, "Answer Requirement", Respondent was notified that pursuant to Sections 102.56 of the Board's Rules and Regulations, it was required to file an Answer to the Compliance Specification within 21 days from the date of service, and that failure to do so could result in the Board finding all the allegations of the Compliance Specification to be true and precluding Respondent from introducing any evidence controverting those allegations.
3. The United States Postal Service's "Track and Confirm" system confirms delivery of the Compliance Specification to the Leawood, Kansas address on February 25, 2012, at 11:24 a.m.

4. By letter dated March 20, 2012, sent by regular mail to 12120 State Line Road #314, Leawood, Kansas 66209, Counsel for the Acting General Counsel William LeMaster advised Respondent that an Answer had not been filed in response to the Compliance Specification, and further informed Respondent that Counsel for the Acting General Counsel would file a Motion for Default Judgment with the Board unless Respondent filed an Answer to the Compliance Specification by the close of business on March 27, 2012.
  
5. On March 26, 2012, the Compliance Specification and Notice of Hearing was returned by the United States Postal Service with notification that Respondent was no longer located at the 12120 State Line Road #314, Leawood, Kansas 66209 address, and that the Compliance Specification and Notice of Hearing could not be forwarded. Respondent did not inform Counsel for the Acting General Counsel of a change of address, or provide current contact information. Counsel for the Acting General Counsel unsuccessfully attempted to contact Respondent by telephone to obtain current contact information. Additionally, Counsel for the Acting General Counsel searched for contact information for Respondent using the CLEAR online database, an online investigative platform designed to obtain personal information utilizing public databases. Finally, Counsel for the Acting General Counsel reviewed the information set forth on the State of Kansas Secretary of State's website, which confirms that Respondent is an active Kansas corporation and that Russell Nelson serves as Respondent's Resident Agent at the Leawood address set forth above. The information on the Kansas Secretary of State's website also provided a mailing address for Respondent of P.O. Box 11424, Overland Park, KS 66207.

6. By letter dated March 28, 2012, sent by regular mail to PO Box 11424, Overland Park, KS 66207, the mailing address for Respondent on the Kansas Secretary of State's website, Counsel for the Acting General Counsel advised Respondent that an Answer had not been filed in response to the Compliance Specification; that the undersigned had unsuccessfully attempted to contact Respondent; and that Counsel for the Acting General Counsel would file a Motion for Default Judgment with the Board unless Respondent filed an Answer to the Compliance Specification by noon (12 p.m.) (CT) on April 2, 2012. A copy of the Compliance Specification was enclosed with the March 28, 2012, letter.
7. On March 30, 2012, Counsel for the Acting General Counsel LeMaster's March 28, 2012, letter to Respondent's Overland Park address, referenced above in paragraph 6, was returned to the Regional Office by the Postal Service as undeliverable because the Overland Park Post Office box had been closed and the Postal Service's forwarding order to Respondent's Leawood address had expired.
8. Upon return of Counsel for the Acting General Counsel LeMaster's letter to the Regional Office, on March 30, 2012, Supervisory Attorney Mary G. Taves travelled to Respondent's Leawood address to attempt personal service of Counsel for the Acting General Counsel LeMaster's March 28, 2012, letter and the enclosed Compliance Specification. Upon arrival, it was discovered that Respondent's Leawood address was a UPS store, which contained mail boxes similar to Post Office boxes. Supervisory Attorney Taves attempted to leave Counsel for the Acting General Counsel LeMaster's March 28, 2012, letter with a staff member of the UPS store, but was told the Respondent no longer maintained a box at the facility.

9. To date, Respondent has not filed an Answer to the Compliance Specification.
  
10. Attached hereto and made a part of this Motion are the following documents, which are marked and described as follows:
  - a. G.C. Ex. A – Compliance Specification and Notice of Hearing, Case 17-CA-025175, dated February 24, 2012, signed by Daniel L. Hubbel, Regional Director.
  - b. G.C. Ex. B – Affidavit of Service of Compliance Specification and Notice of Hearing, showing a date of mailing of February 24, 2012.
  - c. G.C. Ex. C – Copy of the United States Postal Service’s “Track and Confirm” online results showing certified mailing results of the Compliance Specification to Respondent’s Leawood address (Certified Number 7009 2250 0002 6822 3118).
  - d. G.C. Ex. D – Counsel for the Acting General Counsel LeMaster’s letter to Respondent’s Leawood address, dated March 20, 2012.
  - e. G.C. Ex. E – Copy of the front of the Compliance Specification envelope mailed by certified mail to Respondent on February 24, 2012, showing the return of the Compliance Specification by the United States Postal Service as undeliverable.
  - f. G.C. Ex. F – Counsel for the Acting General Counsel LeMaster’s letter to Respondent’s Overland Park address, dated March 28, 2012.
  - g. G.C. Ex. G – Copy of the front of the envelope containing the March 28, 2012, letter mailed to Respondent’s Overland Park address by Counsel for the Acting General Counsel LeMaster, showing the March 30, 2012, return of his letter by the United States Postal Service as undeliverable because the forwarding address (the Leawood address) had expired.
  
11. Counsel for the Acting General Counsel submits that an Order Granting Default Judgment is fully warranted and necessary in order to effectuate the purposes of the Act and to avoid unnecessary costs and delay. Respondent’s failure to file an Answer to the Compliance Specification warrants a finding that Respondent admits the allegations of the Compliance Specification and Notice of Hearing, and further that Respondent should be precluded from adducing evidence seeking to controvert the Compliance Specification’s allegations. Accordingly, Counsel for the Acting General

Counsel requests that the Board issue an Order Transferring this Proceeding to the Board, and an Order Granting Default Judgment on the allegations in the Compliance Specification and Notice of Hearing as a remedy for Respondent's unfair labor practices.

April 2, 2012

Respectfully submitted,

/s/ William F. LeMaster

William F. LeMaster  
Counsel for the Acting General Counsel  
National Labor Relations Board,  
Region 17  
8600 Farley Street, Suite 100  
Overland Park, Kansas 66212-4677

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 17

RUSSELL NELSON, INC.

And

Case 17-CA-025175

**OPERATIVE PLASTERERS AND CEMENT  
MASONS LOCAL UNION NO. 538**

**COMPLIANCE SPECIFICATION AND NOTICE OF HEARING**

The National Labor Relations Board (the Board), on November 2, 2011, issued a Decision and Order in Case 17-CA-025175, reported at 357 NLRB No. 107 (2011), finding that Russell Nelson, Inc. (Respondent) violated Sections 8(a)(1) and (5) of the National Labor Relations Act, and directing Respondent to, *inter alia*, take the following actions to remedy its unfair labor practices: 1) make unit employees whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful conduct, with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), enf. denied on other grounds sub nom. *Jackson Hospital Corp. v. NLRB*, 647 F.3d 1137 (D.C. Cir. 2011).

Controversy having arisen over the amounts of backpay due under the terms of the Board's Order, the Regional Director of the National Labor Relations Board for the Seventeenth Region, pursuant to the authority conferred upon him by the Board, hereby issues this Compliance Specification and Notice of Hearing and alleges the backpay owed to Ron Johnson (Johnson), Gaylord Stegge (Stegge), Ted Thompson (Thompson), and Timothy Vosberg (Vosberg) is as follows.

Ron Johnson

a. The backpay period for Johnson runs from May 23, 2011, to May 26, 2011, the period of time he worked under the terms of parties' collective-bargaining agreement (CBA) but was not compensated.

b. During his backpay period, Johnson worked approximately 30 hours.

c. Johnson was employed as a journeyman cement mason. Under the terms of the CBA, the wage for journeyman cement masons was \$33.26 per hour.

d. Net backpay for Johnson was calculated by multiplying his hourly rate, \$33.26, by the number of hours he worked but was not compensated, i.e. 30 hours. From that amount, the pay Johnson actually received, \$100.00, was then deducted.

e. Attached **Appendix A** shows the net backpay owed to Johnson in connection with the Respondent's failure to pay him according to the CBA, which is \$898.00

2. Gaylord Stegge

a. The backpay period for Stegge runs from May 23, 2011, to May 26, 2011, the period of time he worked under the terms of parties' CBA but was not compensated.

b. During his backpay period, Stegge worked approximately 30 hours.

c. Stegge was employed as a journeyman cement mason. Under the terms of the CBA, the wage for journeyman cement masons was \$33.26 per hour.

d. Net backpay for Stegge was calculated by multiplying his hourly rate, \$33.26, by the number of hours he worked but was not compensated, i.e. 30 hours.

e. Attached **Appendix B** shows the net backpay owed to Stegge in connection with the Respondent's failure to pay him according to the CBA, which is \$998.00

3. Ted Thompson

a. The backpay period for Thompson runs from May 23, 2011, to May 26, 2011, the

period of time he worked under the terms of parties' CBA but was not compensated.

b. During his backpay period, Thompson worked approximately 30 hours.

c. Thompson was employed as a journeyman cement mason. Under the terms of the CBA, the wage for journeyman cement masons was \$33.26 per hour.

d. Net backpay for Thompson was calculated by multiplying his hourly rate, \$33.26, by the number of hours he worked but was not compensated, i.e. 30 hours.

e. Attached **Appendix C** shows the net backpay owed to Thompson in connection with the Respondent's failure to pay him according to the CBA, which is \$998.00

4. Timothy Vosberg

a. The backpay period for Vosberg runs from May 23, 2011, to May 26, 2011, the period of time he worked under the terms of parties' CBA but was not compensated.

b. During his backpay period, Vosberg worked approximately 30 hours.

c. Vosberg was employed as a journeyman cement mason. Under the terms of the CBA, the wage for journeyman cement masons was \$33.26 per hour.

d. Net backpay for Vosberg was calculated by multiplying his hourly rate, \$33.26, by the number of hours he worked but was not compensated, i.e. 30 hours. From that amount, the pay Vosberg actually received, \$500.00, was then deducted.

e. Attached **Appendix D** shows the net backpay owed to Vosberg in connection with the Respondent's failure to pay him according to the CBA, which is \$498.00

5. Summary

a. Summarizing the facts and calculations specified above, and in Appendices A, B, C, and D the obligation of the Respondent to make whole the above employees under the terms of the Board's Order will be discharged by payment to them of the amounts set forth opposite their respective names, as summarized below, in the overall amount of \$3,391.00 plus interest

accrued to the date of payment, minus the tax withholdings required by Federal and State laws.

<u>Claimant</u>	<u>Net Backpay</u>
Johnson, Ron	\$898.00
Stegge, Gaylord	\$998.00
Thompson, Ted	\$998.00
Vosberg, Timothy	\$498.00
<b><u>Total:</u></b>	<b><u>\$3,391.00</u></b>

### ANSWER REQUIREMENT

Respondent is notified that, pursuant to Section 102.56 of the Board's Rules and Regulations, it must file an answer to the compliance specification. **The answer must be received by this office on or before March 16, 2012, or postmarked on or before March 15, 2012.** Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at <http://www.nlr.gov>, click on **E-Gov**, then click on the **E-Filing** link on the pull-down menu. Click on the "File Case Documents" button under "Regional, Subregional and Resident Offices", enter the NLRB Case Number and then follow the directions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after

12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that such answer be signed by Respondent or by a duly authorized agent with appropriate power of attorney affixed. See Section 102.56(a). If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a compliance specification is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission.

As to all matters set forth in the compliance specification that are within the knowledge of Respondent, including but not limited to the various factors entering into the computation of gross back pay, a general denial is not sufficient. See Section 102.56(b) of the Board's Rules and Regulations, a copy of which is attached. Rather, the answer must state the basis for any disagreement with any allegations that are within Respondent's knowledge, and set forth in detail Respondent's position as to the applicable premises and furnish the appropriate supporting figures.

If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the compliance specification are true. If the answer fails to deny allegations of the compliance specification in the manner required under Section 102.56(b) of the Board's Rules and Regulations, and the failure to do so is not adequately explained, the Board may find those allegations in the compliance specification are true and

preclude Respondent from introducing any evidence controverting those allegations.

**NOTICE OF HEARING**

**PLEASE TAKE NOTICE** that on April 24, 2012 at 9:00 a.m. (CT) at the Regional Office Hearing Room, National Labor Relations Board, 8600 Farley, Suite 100, Overland Park, Kansas 66212 and on consecutive days thereafter, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this Compliance Specification. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Overland Park, Kansas, this 24<sup>th</sup> day of February 2012.

/s/ Daniel L. Hubbel  
Daniel L. Hubbel, Regional Director  
National Labor Relations Board  
Seventeenth Region  
8600 Farley, Suite 100  
Overland Park, Kansas 66212-4677

**Appendix A**

Case Name:	Russell Nelson, Inc.		
Case Number:	17-CA-025175	Backpay period:	
Claimant:	<b>Johnson, Ron</b>	5/23/11 to 5/26/11	

Year	Qtr	Week End	Reg. Hours	OT Hours	Wage Rate	Gross Backpay	Actual Pay Received	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses	
2011	2	Total	30	0	33.26	998	100	898	-	-	898	
								Totals	898	-	-	898

**Appendix B**

Case Name:	Russell Nelson, Inc.		
Case Number:	17-CA-025175	Backpay period:	
Claimant:	Stegge, Gaylord	5/23/11 to 5/26/11	

Year	Qtr	Week End	Reg. Hours	OT Hours	Wage Rate	Gross Backpay	Actual Pay Received	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses
2011	2	Total	30	0	33.26	998		998	-	-	998
							<b>Totals</b>	998	-	-	<b>998</b>

**Appendix C**

Case Name:	Russell Nelson, Inc.		
Case Number:	17-CA-025175	Backpay period:	
Claimant:	<b>Thompson, Ted</b>	5/23/11 to 5/26/11	

Year	Qtr	Week End	Reg. Hours	OT Hours	Wage Rate	Gross Backpay	Actual Pay Received	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses	
2011	2	Total	30	0	33.26	998		998	-	-	998	
								Totals	998	-	-	998

**Appendix D**

Case Name:	Russell Nelson, Inc.		
Case Number:	17-CA-025175	Backpay period:	
Claimant:	Vosberg, Timothy	5/23/11 to 5/26/11	

Year	Qtr	Week End	Reg. Hours	OT Hours	Wage Rate	Gross Backpay	Actual Pay Received	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses	
2011	2	Total	30	0	33.26	998	500	498	-	-	498	
								Totals	498	-	-	498

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 17**

**RUSSELL NELSON, INC.**

Charged Party

and

**OPERATIVE PLASTERERS AND CEMENT  
MASONS LOCAL UNION NO. 538**

Charging Party

**Case 17-CA-025175**

**AFFIDAVIT OF SERVICE OF COMPLIANCE SPECIFICATION AND NOTICE OF HEARING**

I, the undersigned employee of the National Labor Relations Board, state under oath that on February 24, 2012, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

RUSSELL NELSON  
RUSSELL NELSON, INC.  
12120 STATE LINE RD, #314  
LEAWOOD, KS 66209-1254

Charged Party  
Certified No. 7009 2250 0002 6822 3118

GREGG D. RHOADES, Business Manager  
OPERATIVE PLASTERERS AND  
CEMENT MASONS  
LOCAL UNION NO. 538  
3333 S 24TH ST  
OMAHA, NE 68108-1852

Charging Party  
Certified No. 7009 2250 0002 6822 3101

February 24, 2012

Bridgett Wagner, Designated Agent of  
NLRB

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

/s/ Bridgett M. Wagner

\_\_\_\_\_  
Signature

English

Customer Service

USPS Mobile

Register / Sign In



Search USPS.com or Track Packages

- Quick Tools
- Ship a Package
- Send Mail
- Manage Your Mail
- Shop
- Business Solutions

# Track & Confirm

GET EMAIL UPDATES [PRINT DETAILS](#)

YOUR LABEL NUMBER	SERVICE	STATUS OF YOUR ITEM	DATE & TIME	LOCATION	FEATURES
70092250000268223118		Delivered	February 25, 2012, 11:24 am	LEAWOOD, KS 66209	Certified Mail

### Check on Another Item

What's your label (or receipt) number?

[Find](#)

#### LEGAL

- [Privacy Policy](#)
- [Terms of Use](#)
- [FOIA](#)
- [No FEAR Act EEO Data](#)

#### OTHER USPS SITES

- [Business Customer Gateway](#)
- [Postal Inspectors](#)
- [Inspector General](#)
- [Postal Explorer](#)

#### ON USPS.COM

- [Government Services](#)
- [Buy Stamps & Shop](#)
- [Print a Label with Postage](#)
- [Customer Service](#)
- [Site Index](#)

#### ON ABOUT.USPS.COM

- [About USPS Home](#)
- [Newsroom](#)
- [Mail Service Updates](#)
- [Forms & Publications](#)
- [Careers](#)

Copyright © 2012 USPS. All Rights Reserved.

General Counsel Exhibit C



UNITED STATES GOVERNMENT

NATIONAL LABOR RELATIONS BOARD

Kansas City Regional Office  
8600 Farley Street - Suite 100  
Overland Park, KS 66212-4677  
Telephone: 913-967-3001  
Agent Assigned: (913)967-3027

Resident Office:  
224 South Boulder Ave. – Suite 318  
Tulsa, OK 74103-3006  
Telephone: 918-581-7952

March 20, 2012

Mr. Russell Nelson  
Russell Nelson, Inc.  
12120 State Line Road #314  
Leawood, KS 66209

Re: Russell Nelson, Inc.  
Case 17-CA-25175

Dear Mr. Nelson:

On February 24, 2012, a Compliance Specification and Notice of Hearing issued in the above-captioned case scheduling a hearing for April 24, 2012. Pursuant to Section 102.56 of the Rules and Regulations of the National Labor Relations Board (Board), Russell Nelson, Inc. (Respondent) is required to file an Answer to the Compliance Specification. Section 102.56 of the Rules and Regulations provides that, if no Answer is filed, all of the allegations in the Compliance Specification shall be deemed to be admitted and may be so found by the Board. As set forth in the Compliance Specification and Notice of Hearing, Respondent's Answer was due on March 15, 2012. To date, an Answer has not been filed. Our office will provide Respondent one final opportunity to file its Answer. If Respondent does not file an Answer by the close of business on March 27, 2012, our office will file a Motion for Default Judgment with the Board.

Sincerely,

A handwritten signature in black ink, appearing to read "William LeMaster".

William LeMaster  
Field Attorney

UNITED STATES  
NATIONAL LABOR  
RELATIONS BOARD  
8600 FARLEY STREET - SUITE 100  
OVERLAND PARK, KS 66212-4677

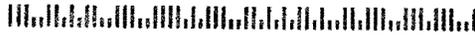
OFFICIAL BUSINESS  
Penalty for Private Use \$300



7009 2250 0002 6822 3118

NIXIE 2245 1 31 03/22/12

RETURN TO SENDER  
UNCLAIMED  
UNABLE TO FORWARD  
RETURN TO SENDER



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
REGION 17  
8600 FARLEY STREET - SUITE 100  
OVERLAND PARK, KS 66212-4677  
An Equal Opportunity Employer

OFFICIAL BUSINESS  
Penalty for Private Use \$300.

RUSSELL NELSON  
RUSSELL NELSON, INC.  
12120 STATE LINE RD, #314  
LEAWOOD, KS 66209-1254

RETURN TO SENDER  
NO LONGER AT  
THIS ADDRESS  
MLNO

General Counsel Exhibit

11



UNITED STATES GOVERNMENT

**NATIONAL LABOR RELATIONS BOARD**

Kansas City Regional Office  
8600 Farley Street - Suite 100  
Overland Park, KS 66212-4677  
Telephone: 913-967-3001  
Agent Assigned: (913)967-3027

Resident Office:  
224 South Boulder Ave. – Suite 318  
Tulsa, OK 74103-3006  
Telephone: 918-581-7952

March 28, 2012

Mr. Russell Nelson  
Russell Nelson, Inc.  
P.O. Box 11424  
Overland Park, Kansas 66207

Re: Russell Nelson, Inc.  
Case 17-CA-25175

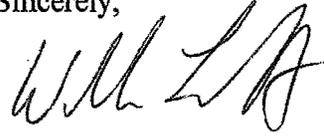
Dear Mr. Nelson:

On February 24, 2012, a Compliance Specification and Notice of Hearing issued in the above-captioned case scheduling a hearing for April 24, 2012. The Compliance Specification and Notice of Hearing was mailed to the last address provided by Respondent in this matter: 12120 State Line Road, Box 314, Leawood, Kansas 66209. The Leawood, Kansas address is also the address set forth on the State of Kansas Secretary of State's website, listing you as Respondent's resident agent. Pursuant to Section 102.56 of the Rules and Regulations of the National Labor Relations Board (Board), Russell Nelson, Inc. (Respondent) is required to file an Answer to the Compliance Specification. Section 102.56 of the Rules and Regulations provides that, if no Answer is filed, all of the allegations in the Compliance Specification shall be deemed to be admitted and may be so found by the Board. As set forth in the Compliance Specification and Notice of Hearing, Respondent's Answer was due on March 15, 2012. To date, an Answer has not been filed. On March 20, 2012, the undersigned mailed a letter to Respondent's Leawood, Kansas address providing a deadline of March 27, 2012, to file an Answer to the Compliance Specification and stating that in absence of an Answer, the undersigned would file a Motion for Default Judgment with the Board.

On March 26, 2012, the United States Postal Service (USPS) returned the February 24, 2012, Compliance Specification to this office with notification that Respondent no longer maintains a presence at the Leawood address above and that USPS was unable to forward the Compliance Specification to Respondent. This office is now mailing the enclosed Compliance Specification to Respondent at the Overland Park address set forth above, which is listed on the State of Kansas Secretary of State's website as Respondent's current address. Respondent has until noon (12 p.m.) on Monday, April 2, 2012, to file

an Answer to the Compliance Specification. If an Answer is not received by that deadline, this office will file a Motion for Default Judgment with the Board on that date.

Sincerely,

A handwritten signature in black ink, appearing to read "William LeMaster". The signature is written in a cursive style with a large, stylized initial "W".

William LeMaster  
Counsel for the Acting General Counsel

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 17

RUSSELL NELSON, INC.

And

Case 17-CA-025175

OPERATIVE PLASTERERS AND CEMENT  
MASONS LOCAL UNION NO. 538

**COMPLIANCE SPECIFICATION AND NOTICE OF HEARING**

The National Labor Relations Board (the Board), on November 2, 2011, issued a Decision and Order in Case 17-CA-025175, reported at 357 NLRB No. 107 (2011), finding that Russell Nelson, Inc. (Respondent) violated Sections 8(a)(1) and (5) of the National Labor Relations Act, and directing Respondent to, *inter alia*, take the following actions to remedy its unfair labor practices: 1) make unit employees whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful conduct, with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), enf. denied on other grounds sub nom. *Jackson Hospital Corp. v. NLRB*, 647 F.3d 1137 (D.C. Cir. 2011).

Controversy having arisen over the amounts of backpay due under the terms of the Board's Order, the Regional Director of the National Labor Relations Board for the Seventeenth Region, pursuant to the authority conferred upon him by the Board, hereby issues this Compliance Specification and Notice of Hearing and alleges the backpay owed to Ron Johnson (Johnson), Gaylord Stegge (Stegge), Ted Thompson (Thompson), and Timothy Vosberg (Vosberg) is as follows.

Ron Johnson

a. The backpay period for Johnson runs from May 23, 2011, to May 26, 2011, the period of time he worked under the terms of parties' collective-bargaining agreement (CBA) but was not compensated.

b. During his backpay period, Johnson worked approximately 30 hours.

c. Johnson was employed as a journeyman cement mason. Under the terms of the CBA, the wage for journeyman cement masons was \$33.26 per hour.

d. Net backpay for Johnson was calculated by multiplying his hourly rate, \$33.26, by the number of hours he worked but was not compensated, i.e. 30 hours. From that amount, the pay Johnson actually received, \$100.00, was then deducted.

e. Attached **Appendix A** shows the net backpay owed to Johnson in connection with the Respondent's failure to pay him according to the CBA, which is \$898.00

2. Gaylord Stegge

a. The backpay period for Stegge runs from May 23, 2011, to May 26, 2011, the period of time he worked under the terms of parties' CBA but was not compensated.

b. During his backpay period, Stegge worked approximately 30 hours.

c. Stegge was employed as a journeyman cement mason. Under the terms of the CBA, the wage for journeyman cement masons was \$33.26 per hour.

d. Net backpay for Stegge was calculated by multiplying his hourly rate, \$33.26, by the number of hours he worked but was not compensated, i.e. 30 hours.

e. Attached **Appendix B** shows the net backpay owed to Stegge in connection with the Respondent's failure to pay him according to the CBA, which is \$998.00

3. Ted Thompson

a. The backpay period for Thompson runs from May 23, 2011, to May 26, 2011, the

period of time he worked under the terms of parties' CBA but was not compensated.

b. During his backpay period, Thompson worked approximately 30 hours.

c. Thompson was employed as a journeyman cement mason. Under the terms of the CBA, the wage for journeyman cement masons was \$33.26 per hour.

d. Net backpay for Thompson was calculated by multiplying his hourly rate, \$33.26, by the number of hours he worked but was not compensated, i.e. 30 hours.

e. Attached **Appendix C** shows the net backpay owed to Thompson in connection with the Respondent's failure to pay him according to the CBA, which is \$998.00

4. Timothy Vosberg

a. The backpay period for Vosberg runs from May 23, 2011, to May 26, 2011, the period of time he worked under the terms of parties' CBA but was not compensated.

b. During his backpay period, Vosberg worked approximately 30 hours.

c. Vosberg was employed as a journeyman cement mason. Under the terms of the CBA, the wage for journeyman cement masons was \$33.26 per hour.

d. Net backpay for Vosberg was calculated by multiplying his hourly rate, \$33.26, by the number of hours he worked but was not compensated, i.e. 30 hours. From that amount, the pay Vosberg actually received, \$500.00, was then deducted.

e. Attached **Appendix D** shows the net backpay owed to Vosberg in connection with the Respondent's failure to pay him according to the CBA, which is \$498.00

5. Summary

a. Summarizing the facts and calculations specified above, and in Appendices A, B, C, and D the obligation of the Respondent to make whole the above employees under the terms of the Board's Order will be discharged by payment to them of the amounts set forth opposite their respective names, as summarized below, in the overall amount of \$3,391.00 plus interest

accrued to the date of payment, minus the tax withholdings required by Federal and State laws.

<u>Claimant</u>	<u>Net Backpay</u>
Johnson, Ron	\$898.00
Stegge, Gaylord	\$998.00
Thompson, Ted	\$998.00
Vosberg, Timothy	\$498.00
<b><u>Total:</u></b>	<b><u>\$3,391.00</u></b>

### **ANSWER REQUIREMENT**

Respondent is notified that, pursuant to Section 102.56 of the Board's Rules and Regulations, it must file an answer to the compliance specification. **The answer must be received by this office on or before March 16, 2012, or postmarked on or before March 15, 2012.** Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at <http://www.nlr.gov>, click on **E-Gov**, then click on the **E-Filing** link on the pull-down menu. Click on the "File Case Documents" button under "Regional, Subregional and Resident Offices", enter the NLRB Case Number and then follow the directions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after

12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that such answer be signed by Respondent or by a duly authorized agent with appropriate power of attorney affixed. See Section 102.56(a). If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a compliance specification is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission.

As to all matters set forth in the compliance specification that are within the knowledge of Respondent, including but not limited to the various factors entering into the computation of gross back pay, a general denial is not sufficient. See Section 102.56(b) of the Board's Rules and Regulations, a copy of which is attached. Rather, the answer must state the basis for any disagreement with any allegations that are within Respondent's knowledge, and set forth in detail Respondent's position as to the applicable premises and furnish the appropriate supporting figures.

If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the compliance specification are true. If the answer fails to deny allegations of the compliance specification in the manner required under Section 102.56(b) of the Board's Rules and Regulations, and the failure to do so is not adequately explained, the Board may find those allegations in the compliance specification are true and

preclude Respondent from introducing any evidence controverting those allegations.

**NOTICE OF HEARING**

**PLEASE TAKE NOTICE** that on April 24, 2012 at 9:00 a.m. (CT) at the Regional Office Hearing Room, National Labor Relations Board, 8600 Farley, Suite 100, Overland Park, Kansas 66212 and on consecutive days thereafter, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this Compliance Specification. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Overland Park, Kansas, this 24<sup>th</sup> day of February 2012.

/s/ Daniel L. Hubbel

Daniel L. Hubbel, Regional Director  
National Labor Relations Board  
Seventeenth Region  
8600 Farley, Suite 100  
Overland Park, Kansas 66212-4677

**Appendix A**

Case Name: Russell Nelson, Inc.

Case Number: 17-CA-025175

Claimant: Johnson, Ron

Backpay period:
-----------------

5/23/11 to 5/26/11		
--------------------	--	--

Year	Qtr	Week End	Reg. Hours	OT Hours	Wage Rate	Gross Backpay	Actual Pay Received	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses	
2011	2	Total	30	0	33.26	998	100	898	-	-	898	
								Totals	898	-	-	898

**Appendix B**

Case Name:	Russell Nelson, Inc.		
Case Number:	17-CA-025175	Backpay period:	
Claimant:	Stegge, Gaylord	5/23/11 to 5/26/11	

Year	Qtr	Week End	Reg. Hours	OT Hours	Wage Rate	Gross Backpay	Actual Pay Received	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses	
2011	2	Total	30	0	33.26	998		998	-	-	998	
								<b>Totals</b>	998	-	-	<b>998</b>

**Appendix C**

Case Name: Russell Nelson, Inc.  
 Case Number: 17-CA-025175  
 Claimant: **Thompson, Ted**

Backpay period: 5/23/11 to 5/26/11		
---------------------------------------	--	--

Year	Qtr	Week End	Reg. Hours	OT Hours	Wage Rate	Gross Backpay	Actual Pay Received	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses	
2011	2	Total	30	0	33.26	998		998	-	-	998	
							<b>Totals</b>		998	-	-	<b>998</b>

**Appendix D**

Case Name: Russell Nelson, Inc.

Case Number: 17-CA-025175

Claimant: Vosberg, Timothy

Backpay period:
-----------------

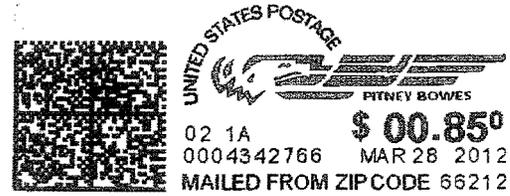
5/23/11 to 5/26/11		
--------------------	--	--

Year	Qtr	Week End	Reg. Hours	OT Hours	Wage Rate	Gross Backpay	Actual Pay Received	Net Backpay	Interim Expenses	Medical Expenses	Net Backpay & Expenses	
2011	2	Total	30	0	33.26	998	500	498	-	-	498	
								Totals	498	-	-	498

United States Government  
National Labor Relations Board  
Region 17  
8600 Farley Street - Suite 100  
Overland Park, Kansas 66212

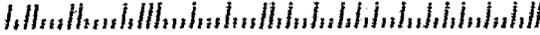
**RECEIVED**  
National Labor Relations Board  
Regional Office - Overland Park, Kansas  
MAR 30 2012  
TIME: 11:15 AM/PM

Mr. Russell Nelson  
Russell Nelson, Inc. ?  
P.O. Box 11424  
Overland Park, Kansas 66207



FORWARD X 641 NFE 1 2111 00 03/28/12  
RUSSELL NELSON INC  
P.O. BOX 11424  
OVERLAND STATE LINE RD # 314  
OVERLAND PARK KS 66209-1254  
RETURN TO SENDER



6620731424 662120467 

**STATEMENT OF SERVICE**

I hereby certify that I have this date served copies of the Acting General Counsel's foregoing Motion To Transfer Proceeding to Board and for Default Judgment on all parties listed below by electronically filing with the Executive Secretary of the National Labor Relations Board, and by electronic mail to the Charging Party's representative. Respondent was served by overnight delivery service.

Dated: April 2, 2012

/s/ William F. LeMaster

William F. LeMaster  
Counsel for Acting General Counsel

**PARTIES RECEIVING BY OVERNIGHT MAIL:**

Mr. Russell Nelson  
Russell Nelson, Inc.  
12120 State Line Road #314  
Leawood, KS 66209

Respondent  
Overnight Delivery No.  
UPS # 1ZA40E260195019333

Mr. Russell Nelson  
Russell Nelson, Inc.  
PO Box 11424  
Overland Park, KS 66207

Respondent  
Overnight Delivery No.  
UPS # 1ZA40E260198649942

**PARTIES RECEIVING ELECTRONIC MAIL:**

Mr. Gregg D. Rhoades  
Operative Plasterers and Cement Masons  
Local Union No. 538  
3333 South 24<sup>th</sup> Street  
Omaha, NE 68108  
opcma538@yahoo.com

Charging Party