



## **NLRB Acting General Counsel Issues Memo on Surreptitious Recording of Collective-Bargaining**

On June 25, 2025, NLRB Acting General Counsel William B. Cowen issued Memorandum GC 25-06, titled “Surreptitious Recordings of Collective-Bargaining Sessions as a Per Se Violation of the NLRA.” This memo provides significant guidance for employers and unions engaged in collective bargaining.

The memorandum addresses concerns arising from recent technological advancements that make it easier to secretly record bargaining sessions using high-quality audio and AI-based transcription tools. Although the NLRB had not previously ruled on this issue, the General Counsel now takes the position that such conduct should be treated as a per se violation of the National Labor Relations Act (NLRA), specifically Sections 8(a)(5) and 8(b)(3).

The legal foundation for this directive builds on the Board’s decision in Bartlett-Collins Co., which held that even an open insistence on recording bargaining sessions can constitute a per se violation. The memo argues that secret recordings are even more disruptive, as they violate trust, suppress candid dialogue, and undermine the principles of good-faith bargaining.

### **Key Practical Concerns:**

- Secret recordings discourage open and spontaneous discussions.
- They may cause parties to negotiate “for the record” instead of in earnest.
- The practice fosters a culture of fear and suspicion.

### **New Enforcement Guidance:**

Regional offices are now directed to issue complaints alleging per se violations when investigations confirm that a party surreptitiously recorded a bargaining session. The memo emphasizes that such conduct should be viewed independently from overall bargaining conduct and treated as a standalone violation.



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Employers and unions should review their practices and training protocols to ensure compliance with this updated interpretation.

If you have any questions about how this may affect your organization's bargaining procedures, our team is available to advise you.

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