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**Office location:**  
 4275 NE Halsey St., Portland, Oregon

**Mailing address:**  
 P.O. Box 13150, Portland, OR 97213

**Phone:** (503) 288-3311

**Web address:**  
<http://nwlaborpress.org>

**Editor & Manager:** Michael Gutwig  
**Senior staff reporter:** Don McIntosh  
**Office manager:** Jill Lukens

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## ...ILWU case

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The case stems from a dispute that began in 2012. ILWU members employed by ICTSI waged a disciplined and coordinated slowdown at Terminal 6, operating cranes and driving trucks more slowly than usual. That would have been legal, except that the National Labor Relations Board (NLRB) determined that ILWU's motive was to get ICTSI to put pressure on the Port of Portland to give the union jurisdiction over two jobs plugging and unplugging refrigerated containers. That made the slowdown a violation of the anti-union 1947 federal law known as Taft-Hartley. Among other things, Taft-Hartley bars unions from taking economic action against one employer in order to target another employer, and it gives employers the right to sue for economic damages if they do. The dispute also put ILWU at odds with others in organized labor because the jobs at issue had historically been represented by IBEW Local 48.

ICTSI is owned by Phillipine billionaire Enrique Razon, and has been involved in significant disputes with longshore unions in Indonesia and Madagascar.



On Feb. 14, ICTSI's Portland general manager Elvis Ganda watched the proceedings on one side of the courtroom while ILWU President Willie Adams looked on from the other side.

ILWU attorney Dan Jackson argued that ICTSI grossly inflated its estimate of economic damages. He also said ICTSI had not shown that the slowdown was solely motivated by the illegal motive of putting pressure on a third party, as opposed to other ongoing disputes with ICTSI.

Simon could leave the jury award as is, reduce the amount, or order a new trial that would focus just on the damages. After three hours of legal arguments by the two sides, Simon said he would issue a decision within 60 days.

Simon didn't say how he's

likely to rule, but at various points he did say he found some of ILWU's arguments persuasive. One expert witness called by ICTSI had cherry-picked data to inflate damage calculations, and his model had assumed that ICTSI could raise prices and still increase volume, in violation of accepted economic theory. But Simon also faulted ILWU attorneys for not having made that argument more forcefully earlier in the trial.

ILWU has said ICTSI is trying to get the union to pay for losses that members weren't responsible for, and reimburse for profits that the company wasn't likely to make. The Port of Portland had been losing money at Terminal 6 for years; that's why the public body privatized the terminal in the first place, signing a 25-year lease agreement

with ICTSI. Terminal 6 has several disadvantages that make it less than competitive with other West Coast ports: It's far upriver from the ocean, and shipping channels in the Columbia River aren't deep enough for the new generation of bigger more cost-effective cargo ships. No other terminal operator has stepped in since ICTSI ended operations in 2017.

If Judge Simon finds that the jury damage award isn't supported by evidence of real economic damage, he could reduce the award to \$27.6 million: \$20 million for equipment ICTSI had to abandon when it ended operations at Terminal 6 and money it owed the Port to terminate its lease agreement; plus up to \$7.6 million in direct damages due to lost productivity during the slowdown.

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