

Insights, News & Events

JURY SHOCKER: 93 MILLION REASONS WHY THE ILWU MAY SOON CEASE TO EXIST

Insights
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A recent \$93.6 million verdict from an Oregon jury has the potential to bankrupt a union that some describe as one of the strongest and most militant in the United States—the International Longshore and Warehouse Union (ILWU). The November 4 federal jury award in favor of ICTSI Oregon Inc., the former operator of a Port of Portland terminal, was handed down after allegations of unlawful boycotts carried out by the ILWU-backed dock workers, which caused significant damages to ICTSI's business. What do employers need to know about this staggering jury award that threatens to upend a national labor law stalwart?

DRAMA AT THE DOCKS: LONG-RUNNING LABOR DISPUTE LEADS TO LEGAL BATTLES

The lawsuit was the last remaining active case out of six separate actions filed in 2012 arising from a labor dispute at Terminal T6 in Portland, Oregon. The dispute concerned which union was entitled to perform the job of plugging, unplugging, and monitoring refrigerated shipping containers (referred to as the "reefer" jobs) at T6. The ILWU and its local chapter, Local 8, alleged that their collective bargaining agreement required ICTSI to assign the reefer jobs to ILWU members. Conversely, the International Brotherhood of Electrical Workers (IBEW) argued that other contracts required the reefer jobs to be assigned to IBEW members.

The ILWU filed several grievances to have the reefer jobs assigned to its members. When the IBEW learned of this, it threatened to picket ICTSI if the reefer jobs were awarded to

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the ILWU. In August 2012, the National Labor Relations Board (NLRB) issued a decision awarding the reefer work to IBEW-represented employees. That did not sit well with the Longshore union.

According to ICTSI, the ILWU and Local 8 responded by engaging in unlawful secondary boycott activity, including inciting or encouraging unlawful slowdowns. By “inducing and encouraging” longshoremen “to unnecessarily operate cranes and drive trucks in a slow and nonproductive manner, refuse to hoist cranes in bypass mode, and refuse to move two 20-foot containers at a time on older carts, in order to force or require ICTSI and carriers who call at terminal 6 to cease doing business with the Port,” ITSCI claimed the ILWU and Local 8 violated federal labor law. ICTSI prevailed before an administrative law judge in 2014, then in front of the NLRB in 2015, and finally in front of a federal appeals court in 2016.

But the damage had already been done. ICTSI alleged that the union’s campaign led to the loss of its service contracts with two major shipping companies—which was approximately 98% of its business. The company further alleged that the union’s actions caused it to suffer in excess of \$101 million in damages. The former operator filed a civil claim and took the Longshoremen’s union to federal court in Oregon to recover these damages.

JURY DROPS HAMMER ON THE UNION

After a 10-day trial, the jury unanimously found that both the ILWU and Local 8 engaged in unlawful labor practices for a several-year period. The jury further found that the unlawful labor practices were a substantial factor in causing damages to ICTSI and that at no time during the period on question did either the ILWU or Local 8 engage in lawful, primary labor practices.

On November 4, the jury awarded ICTSI \$93,635,000 due to the ILWU’s and Local 8’s actions. The jury apportioned these damages as 55% the fault of the ILWU and 45% the fault of Local 8. Finally, the jury found that non-labor factors did not cause any of the damages to ICTSI.

WHAT HAPPENS NEXT?

The jury's verdict has the potential to bankrupt the ILWU. Each year, unions like the ILWU file must file a form with the Department of Labor called an LM-2 which lists various financial information about the union. The 2018 LM-2 filed by the ILWU national headquarters lists the total assets of the union as just over \$8 million – \$85 million less than necessary to satisfy the judgment against them.

In a motion requesting the court to postpone the entry of the judgment, the ILWU acknowledged that "entry of judgment on the verdict will impose a heavy financial burden with serious collateral consequences," and those consequences "include bankruptcy." The ILWU itself, therefore, acknowledges that this decision could spell the end of the ILWU as we know it.

The union has already said that it intends to oppose the judgment and take legal steps to set aside the judgment. It is also likely that the ILWU will appeal the final ruling. Thus, any bankruptcy filing could be years from now, but it is certainly a realistic possibility.

WHAT DOES THIS MEAN FOR EMPLOYERS?

Regardless of what happens in the aftermath of this astonishing jury verdict, the development represents a significant victory for employers. It aptly demonstrates that unions cannot engage in unfair labor practices with impunity, and there may be consequences – significant consequences – to any illegal activity on their behalf.

Further, employers who deal with the ILWU should be aware that the union has been dealt a significant and possibly deadly blow. This does not mean that the ILWU will become a pushover and immediately cease to engage in its normal activities. On the contrary, a union facing extinction will likely seek to expand more aggressively. You should be aware of this development, however, when working with the ILWU to the extent it impacts your individual situation.

We will continue to monitor further developments and provide updates, so you should ensure you are subscribed to [Fisher Phillips' alert system](#) to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney or any attorney in our [Labor Relations Practice Group](#).

This Legal Alert provides an overview of a specific federal jury verdict and related legal proceedings. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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