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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

MOTOR COACH INDUSTRIES, INC.,)
et al.,)
Plaintiffs,)

v.)

ANDREW L. LEWIS, SECRETARY OF THE)
DEPARTMENT OF TRANSPORTATION OF)
THE UNITED STATES, et al.,)
Defendants.)

Civil Action No. 83-103-A

ORDER

This matter comes before the court on plaintiffs' motion for a temporary restraining order under Rule 65 of the Federal Rules of Civil Procedure. The parties dispute the appropriate standard to be applied in ruling on plaintiffs' motion. Plaintiffs would have this court apply the standards set forth in Blackwelder Furniture Co. v. Seilig Manufacturing Co., 550 F.2d 189 (4th Cir. 1977). Defendants contend that, if this court should find that the procurement contract involved in the present case is a public contract (a proposition they do not concede), the court should apply the standards enunciated in Steinthal & Co. v. Seamans, 455 F.2d 1289 (D.C.Cir. 1971), as adopted by the Fourth Circuit in Wilkie v. Department of the Army, 485 F.2d 180, 182 (4th Cir. 1973).

The court finds that it does not need to choose between the two standards proposed (and thus face prematurely the question whether the procurement contract at issue is a public or private

contract), because the court finds it must deny the plaintiffs' motion for temporary restraining order regardless of the standard applied.

Under the Blackwelder standards, four factors must be weighed in making a decision in a motion for a temporary restraining order: (1) the plaintiff's likelihood of success on the merits; (2) whether the plaintiff will suffer irreparable harm if the interlocutory relief is denied; (3) the harm to the defendant if the injunction is granted; (4) the public interest. See Blackwelder, *supra*. See also Holloway v. Lynch, No. 82-1511 (4th Cir. Jan. 3, 1983); Wetzel v. Edwards, 635 F.2d 283 (4th Cir. 1980). Any measure under this balancing-of-interest test must be made with reference to the date on which this dispute will be heard on the merits, February 16, 1983. Given the relatively expeditious hearing schedule, it is difficult for the court to see any irreparable harm that will reach either the plaintiffs' or the public's interests. Nor is the plaintiffs' likelihood of success on the merits so great as to justify the potential harm that could affect some of the defendants if plaintiffs' motion is granted.

And even if the procurement contract at issue is found to be a public contract, and the Steinthal standard applies to the present motion for temporary relief, the plaintiffs have failed to demonstrate such a "clear showing of illegality" as would warrant this court thrusting itself into the "vortex of emergency litigation." Steinthal, *supra*. Even if the contract is ultimately found illegal under proper public procurement requirements, that

illegality is not so pronounced or egregious as to dictate present precipitous action, particularly when the merits of this controversy will be heard in 15 days.

Therefore, plaintiffs' motion for a temporary restraining order is DENIED.

Let the Clerk send a copy of this order to all counsel of record.

DATE: Feb. 1, 1983

Richard L. Williams
UNITED STATES DISTRICT JUDGE