

No. 10-5602

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**  
**May 25, 2010**  
LEONARD GREEN, Clerk

SECRETARY OF LABOR, Hilda L. Solis, )  
)  
Plaintiff-Appellee, )  
)  
v. )  
)  
TENNESSEE COMMERCE BANCORP, INC.; )  
TENNESSEE COMMERCE BANK, )  
)  
Defendants-Appellants. )

O R D E R

Before: SUTTON and GRIFFIN, Circuit Judges; BERTLESMAN, District Judge.\*

In this enforcement action brought by the Secretary of Labor pursuant to the whistleblower-protection provisions of the Sarbanes-Oxley Act of 2002, the district court issued a preliminary injunction on May 19, 2010, requiring the immediate reinstatement of the complainant, George Fort. The defendants appeal and move for a stay pending appeal. The Secretary opposes the motion.

Our discretion in addressing the motion for a stay is governed by the traditional injunctive relief standards. *Nken v. Holder*, 129 S. Ct. 1749, 1761 (2009). Thus, we consider (1) whether the defendants have a strong or substantial likelihood of success on the merits; (2) whether they will suffer irreparable harm if the preliminary injunction is not stayed; (3) whether the issuance of a stay will substantially injure other interested parties; and (4) where the public interest lies. *Id.*; *see also Grutter v. Bollinger*, 247 F.3d 631, 632 (6th Cir. 2001) (order).

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\*The Honorable William O. Bertlesman, United States District Judge for the Eastern District of Kentucky, sitting by designation.

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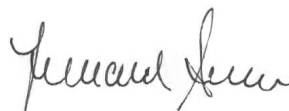
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The defendants argue that the district court lacks the authority to enforce a preliminary order of the Secretary issued under the procedures set forth in 49 U.S.C. § 42121(b)(2). The statute provides that the Secretary may file an action in district court to enforce “an order issued under paragraph (3).” § 42121(b)(5). The district court’s authority, therefore, turns on whether a preliminary reinstatement order is an order issued under paragraph (3) for the purposes of judicial enforcement. This issue of first impression in this court has been addressed only once in a published court of appeals decision, *Bechtel v. Competitive Techs., Inc.*, 448 F.3d 469 (2d Cir. 2006), a case in which the three judges had three different takes on the issue.

We find that the defendants’ motion for a stay raises a substantial question as to the authority of the district court to issue the preliminary injunction. The defendants assert that they will suffer irreparable harm if Fort is physically reinstated immediately. They argue that Fort’s reinstatement will cause disruption to the bank’s personnel and operations that cannot be undone if this court finds the district court lacked authority to issue the injunction. By contrast, if the reinstatement order was properly issued, Fort can be made whole with compensatory damages, back pay, and interest. A balancing of the harms supports the issuance of a stay.

The motion for a stay of the May 19 preliminary injunction is **GRANTED**. Although the Secretary requests that any stay be conditioned on the filing of an appropriate bond, we conclude that the filing of a bond or other security is not warranted. The clerk is directed to expedite the briefing and submission of this appeal.

ENTERED BY ORDER OF THE COURT



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Clerk