RIDGEWAY ADMINISTRATIVE REPORTS

1

RIDGEWAY ADMINISTRATIVE REPORTS

Volume 1 R. Adm.

Cases Argued and Determined
in the

ADMINISTRATIVE COURT OF THE STATE OF RIDGEWAY

Printed by the Supreme Court of the State of Ridgeway
Office of the Reporter of Decisions

JUDGES AND RETIRED JUDGES OF THE ADMINISTRATIVE COURT OF THE STATE OF RIDGEWAY

With Date of Appointment

JUDGES

zac2524 ..... **08-25-21**
insertfailure **08-25-21**
Dannlabs **12-19-21**

TABLE OF CASES REPORTED

IN RE STEKING2008.

SteKing2008, Plaintiff,

v.

**Ridgeway Parks Service,
Ridgeway Law Enforcement
Training Center,
Defendants.**

No. RSC-AD-268

Administrative Court of the State of Ridgeway

Decided April 17, 2022

Background: Former Park Ranger filed petition to challenge allegedly unlawful blacklist from obtaining law enforcement certification and dishonorable discharge from law enforcement agency, alleging that incident which led to the blacklist and dishonorable discharge resulted from a compromise of the Ranger's account by his brother.

Holdings: The Administrative Court, Justice Jackson, sitting by designation, held that:

(1) Petitioner's blacklist by law enforcement certification agency violated due process under Administrative Procedure Act;
(2) Petitioner's dishonorable discharge violated due process under Administrative Procedure Act;
(3) Blacklist by law enforcement certification agency violated statute prohibiting blacklists from employment as such blacklists operated as *de facto* employment blacklists by preventing petitioner from seeking employment in law enforcement agencies;
(4) Law enforcement agency and law enforcement certifications department's argument that statute prohibiting blacklists did not apply to retroactive administrative actions lacked merit.

Ordered accordingly.

APPEARANCES OF COUNSEL:

Asianible, RW, for plaintiff.

Clifford2, Solicitor General, Ridgeway Department of Justice, Palmer, RW, for defendants.

Robert H. Jackson, Visiting Justice.

ORDER AND MEMORANDUM OF LAW

Law Enforcement Training Center blacklists are continuous denials of employment. Because it is a requirement to hold a certification before gaining employment within a law enforcement organization, it makes itself a necessary power to ensure uniformity in law enforcement training notwithstanding what department a person is taken into. However, because it makes itself a contingent latch, it positions itself as a gatekeeper of who is and is not a law enforcement officer in a punitive regard rather than an educational regard. Suddenly, the agency then takes it upon itself to proactively leverage the contingent latch that was given to ensure uniformity in training and exploit that leverage to exact its own will of justice. This is a practice that was common before the new set of laws, yet explicitly denied by the legislature and is antithetical to the spirit of the law. See Public Safety Act § 2(f). The Public Safety Act explicitly demands that there be some sort of due process of law afforded to even the revocation of a certification. See Public Safety Act § 2(e)(i). It is preposterous to argue that a revocation ought to be wrapped with more due-process from an ultimate denial of employment.

The hyper-technical argument of the respondents when reading the statute to reason is wrong and without due regard for a pragmatic approach to law. It is important to always review the law in the material understanding of all facts. If respondents wanted to be successful with their argument, they would have to prove that petitioner would have a chance of being employed at any law enforcement agency such as the State Police, or the Sheriff's Office. However, the petitioner cannot get employed at these agencies, and he will never be able to because he has this blacklist. See APA 2.5 § (b)(1)(9). Therefore, the blacklist from the training center becomes a *de facto* employment blacklist. The only way to defeat this point is to prove that he would not be hindered in gaining employment. Not by going on a tangential argument without consideration to the consequences of their decision.

This interpretation does not restrict the ability of the government to take adequate action against dealers, nor does it tie its hands to prevent dealers from rejoining the ranks of government. There are methods that the law provides which the government can use to ensure dealers and other severe wrongdoers do not rejoin the ranks of employment. It is called criminal prosecution. The law opposes and rebukes those who attempt drastic action unilaterally. To demand that a person get their due process rights fulfilled via a criminal prosecution is not a burdensome one when the law makes provisions to allow departments to place a person on indefinite administrative leave if there is an active criminal investigation. See APA § 1.6(b)(1). There is no material hindrance to prevent adequate response to triage a dealer in the context of the wide array of tools available to department leaders to properly administrate. All this requires is that drastic, long-term action against someone such as a *de facto* blacklist from pretty much any law enforcement agency, be done with due process of a criminal prosecution.

Retroactive laws which are not criminal are not constitutionally forbidden. Not under the United States nor our constitution. In *Flemming v. Nestor*, the court found that ex post facto denial of social security benefits was not a violation of the *Ex Post Facto* clause of the constitution. The court ruled that because the action was not punitive in nature, it is not a violation of the *Ex Post Facto* Clause. See *Flemming v. Nestor*, 363 U.S. 603 (1960). Furthermore, "prohibition is confined to laws respecting criminal punishments, and has no relation to retrospective legislation of any other description." See *Johannessen v. United States*, 225 U.S. 227 (1912). However, there is a due process issue that needs to be addressed with retroactive civil litigation. While the government regulating itself, for the most part, does not create any due process concerns, we will proceed as if the government is entitled in some way, shape, or form to due process. When reviewing a retroactive law under the lens of due process, it is evaluated under the rational basis test. See *PBGC v. R. A. Gray & Co*., 467 U.S. 717 (1984). Finally, the court needs to review whether the legislature intended for the provisions to be executed retroactively. Generally, unless explicitly specified that a provision is retroactive, it shall not be applied unless the language of the law requires it. See *Bowen v. Georgetown Univ. Hosp*., 488 U.S. 204 (1988). In addition, "[a]n appellate court must apply the law in effect at the time it renders its decision, unless such application would work a manifest injustice or there is statutory direction or legislative history to the contrary." See *Bradley v. School Bd. of Richmond*, 416 U.S. 696 (1974).

Now that we have a good basis and understanding of retroactivity in law, it is time to consider the language of the law, as well as any manifest injustices from retroactive application and apply it to the case. As explained with the reasoning for removing the blacklist from the Law Enforcement Training Center, these actions have prolonged consequences. The placement of the petitioner on a blacklist is not an injury per say, but a guarantee of one for a background investigator or application reader to hold an unlawful bias against the petitioner in a hiring period. The injury sustained by the petitioner is continuous and cannot be compounded to a single point of action. For example, if a department made a policy outlining an allowed practice and in fact ordering its officers to fulfill such, however the legislature decides this practice is wrong, would the order still stand? Of course, it wouldn't. How different is a department blacklist from this case? After all, a blacklist is an order to deny a person on all future applications.

The reasons for setting aside the dishonorable discharge of the Parks Service are of the same degree as the above. A dishonorable discharge has certain statutory disabilities placed on a petitioner such as the fact that they will get looked disfavorably in all future hiring decisions, and that he would hold a four-month denial of employment from that agency See APA § 1.3(a). In exchange for these disabilities, the legislature placed in a nuanced system of protections such as the right to an administrative hearing, see APA § 1.3(b). Here the government is attempting to unfairly leverage retroactivity to gain the disabilities of it, but not the procedures of attaining those disabilities. If the government wants these disabilities to be effective, it must follow the procedure demanded by law. If the government wishes to keep the dishonorable discharge, then it must be done upon recommendation of a hearing. If the government is not attempting to leverage the new statutory disabilities of a dishonorable discharge, then it must modify its action to be conformant to law as to prevent future violations.

Due to the retroactivity framework, the court will not adjudicate whether the dishonorable discharge is arbitrary.

So long as there is no unlawful preclusion from the petitioner of him gaining a Law Enforcement Training Center certification by the petitioner having a revoke, then there is no reason as according to the retroactive framework I have presented above to set aside the revoke for a violation of statutory rights. If the court were to apply the statute retroactively in this case and in this part, then almost every certification would be subject to reinstatement, an interpretation the court finds to be an injustice so therefore it must not be considered retroactively.

CONCLUSION

The Law Enforcement Training Center blacklist is **SET ASIDE**, however its revocation shall remain effective so long as there is no preclusion from gaining a new certification.

The dishonorable discharge from the Ridgeway Parks Service is **SET ASIDE**, however no order of reinstatement shall be made without a recommendation from an administrative hearing, and to provide a chance for the government to uphold the dishonorable discharge, it shall convene an administrative hearing.

IT IS SO ORDERED, ADJUDGED, AND DECREED.