

No. 31626

Max Crow and Gary Wroblewski v. Wayne County Board of
Education

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Starcher, Justice, dissenting:

In schools all over West Virginia, teachers are regularly assigned to do their share of duty as hall monitors, bathroom monitors, and lunchroom monitors – during their normal work day. No one argues that school boards cannot legally assign teachers to do this monitoring work. Legally, there is no difference between this monitoring work and monitoring children on a bus.

The majority opinion cites no authority for its conclusion that requiring a teacher to do student monitoring (on a bus, or anywhere else) during the teacher’s regular work day is an illegal “merger” of tasks.

The majority opinion also omits any discussion of the fact that assigning these teachers in the instant case to do bus monitor duty occurred in order to stop incidents on the school bus that were caused by Alternative School students. These teachers work at the Alternative School, know these students, and are in a good position to monitor and influence the students’ behavior.

I believe in creating and using Alternative Schools – to help keep “kids in trouble” in the school system. If we make it harder to run Alternative Schools, we will have

less of them – but the fact is, we need *more* of them.

Circuit Judge King wrote a thoughtful and well-reasoned opinion upholding the Grievance Board decision. I would affirm Judge King’s decision.

I caution teachers, school service personnel, and the Grievance Board against relying on the *per curiam* opinion in the instant case – especially to try to restrain school boards from requiring teachers to monitor students as part of a teacher’s daily work duties. The majority opinion, as I see it, is *sui generis*, result-oriented, limited to its facts, and has no precedential value.