

**No. 31223– *Bolyard v. Board of Education of Grant County***

**FILED**

**December 10, 2003**

**RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA**

McGraw, Justice, dissenting:

In this case Ms. Bolyard was forced by the Board to keep a job she wished to leave and forgo another, better-paying job because she learned of the new job offer several weeks too late. As a result, the Vo-Tech center was deprived of a qualified employee it wished to hire to service the needs of its students. The limitations placed on employees like Ms. Bolyard, which only allow them a narrow window in which to change jobs to another school, limit the ability of schools like the Vo-Tech center to compete for qualified employees. These limitations are also not far from being the sort of “involuntary servitude” prohibited by our Constitution. As this Court noted over eighty years ago:

In *Bailey v. Alabama*, 219 U. S. 219, 31 Sup. Ct. 145, 55 L. Ed. 191, the federal anti-peonage acts, founded on the Thirteenth Amendment, inhibiting involuntary servitude, were held to be violated by a statute which sought to compel service of labor by making it a crime to fail or refuse to perform it. It was said in that case that, although the court might not impute to a state an actual motive to oppress by a statute, yet it should consider the material operation of such a statute and strike it down if it becomes an instrument of coercion forbidden by the federal Constitution.

*Ex parte Hudgins*, 86 W. Va. 526, 533, 103 S.E. 327, 330 (1920). While the state may not consider resigning from one’s job as a guidance counselor a crime, it is clear that the Board of Education made it impossible for Ms. Bolyard to take advantage of a opportunity to get a better job, essentially forcing her against her will to remain in a job she wished to leave.

Some may argue that requiring Board approval of any resignation serves the salutary purpose of preventing one school or school system from “cherry picking” good employees from another, but the countervailing argument is just as strong. Although the elementary school students may have benefitted from not losing Ms. Boylard, the Vo-tech students obviously did not have the benefit of her expertise. When one adds to the equation the fact that the resignation policy forces some employees to stay in a job against their will, I believe the balance tips in favor of allowing more freedom of movement for school employees. Therefore, I must respectfully dissent.