

SEP 04 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARK WEBER,

Plaintiff - Appellant,

v.

TWIN BRIDGES SCHOOL DISTRICT;
CONSOLIDATED SCHOOL DISTRICT
NO. 7, MADISON COUNTY; DAVE
WHITESELL, individually and as
Superintendent of Twin Bridges School,

Defendants - Appellees.

No. 08-36010

D.C. No. 2:05-cv-00083-RFC

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Richard F. Cebull, Chief District Judge, Presiding

Submitted September 2, 2009**
Seattle, Washington

Before: HAWKINS, McKEOWN and BYBEE, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Because the board of trustees never voted to terminate Weber, there was never a “decision to terminate” within the meaning of the statute, *see* Mont. Code Ann. § 20-4-204, and the duty to arbitrate was never triggered. Therefore, we reverse the district court’s summary judgment in favor of the defendants and remand.

REVERSED and REMANDED.