

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 21 2015

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

BOARD OF TRUSTEES OF THE
NORTHWEST METAL CRAFTS TRUST
FUND,

Plaintiff - Appellee,

v.

SWEED MACHINERY INC., an Oregon
corporation,

Defendant - Appellant.

No. 13-35947

D.C. No. 2:12-cv-01676-MAT

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Mary A. Theiler, Magistrate Judge, Presiding

Argued and Submitted July 9, 2015
Seattle, Washington

Before: NGUYEN and FRIEDLAND, Circuit Judges and ZOUHARY,** District
Judge.

Sweed Machinery Inc. appeals the district court's grant of summary
judgment in favor of the Board of Trustees of the Northwest Metal Crafts Trust

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

** The Honorable Jack Zouhary, District Judge for the U.S. District
Court for the Northern District of Ohio, sitting by designation.

Fund. We have jurisdiction pursuant to 28 U.S.C. § 1291. Reviewing de novo, *Nw. Adm'rs, Inc. v. Albertson's, Inc.*, 104 F.3d 253, 255 (9th Cir. 1996), we affirm.

Assuming, without deciding, that the 2007 collective bargaining agreement (“CBA”) is ambiguous, we agree with the district court that extrinsic evidence establishes that Sweed was required to make contributions to the Trust Fund in the month following an employee’s termination, transfer to a non-union position, or opt-out. *See Ariz. Laborers v. Conquer Cartage Co.*, 753 F.2d 1512, 1518 n.9 (9th Cir. 1985). The Board’s uncontradicted evidence of industry practice regarding the reporting of employees’ hours to the Trust Fund, coupled with evidence that eligibility for benefits depends on the hours worked by an employee in previous months, supports the district court’s conclusion that the Board’s interpretation of the CBA is the only one that is consistent with the intent of the parties. Accordingly, the district court correctly granted summary judgment in favor of the Board. *See id.*

AFFIRMED.