

Straight Talk

CAT TEAM Local 235A



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RULING: USW MINERS' REP HAS RIGHT TO ENTER SHERWIN PLANT

Judge Sides with Union, MSHA in Safety Inspection Dispute

USW Local 235A won an important victory on Friday, Sept. 25, when Administrative Law Judge Thomas P. McCarthy ruled that the USW's miners' representative, Joe Guzman, has a legal right to enter the Sherwin Alumina plant during Mine Safety and Health Administration (MSHA) inspections, despite the company's nearly year-long lockout.

Only a few days after locking our brothers and sisters out of their jobs last October, Sherwin denied Brother Guzman the right to accompany an MSHA inspector during a routine inspection of the facility. Several more times over the following weeks, Sherwin again denied Guzman access to the plant. As a result, MSHA issued a citation to Sherwin that the company contested, setting in motion the legal proceedings that led to the judge's ruling.

In his decision, Judge McCarthy found that by refusing access to a Local 235A representative, Sherwin was in violation of the Mine Safety and Health Act of 1977. The judge ordered Sherwin to provide Guzman with access to the facility and to provide whatever training he needs since the lockout to perform his duties.

At the heart of the judge's decision was the question of whether locked-out employees are still entitled to representation. A 1993 ruling known as the Cypress Empire case, which Sherwin used to support its position, had stated that striking workers were not entitled to such representation. However, Judge McCarthy ruled that striking workers and locked-out workers have different rights.

Because locked-out members of Local 235A "legally are still 'working' at the Sherwin Mine," McCarthy wrote, "they retain an interest in the health and safety of the mine and should be allowed to have a representative."

We expect that Sherwin will appeal this ruling, and we will keep you updated on any developments in this case as they happen.

One Day Longer – One Day Stronger