

Keep the Union at Bay

The Racial Dimensions of Anti-Union Practices in US Agriculture and the Long Fight for Migrant Farm-Labor Representation

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2 Violence in the Fields

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The North may have won the [Civil] War, but that was just on paper. We still haven't given up our slaves.

One grower confronting a FLOC organiser, 1998¹

2.1 In the Fields of North Carolina

FLOC's office was in a small town called Dudley, just a few miles away from US 117. Located in the backroom of a small grocery store called *La Palmita*, each night a handful of organizers in their mid-twenties met inside a small room hidden between the pool table and tortilla shelves. Accustomed to Italian unions, I was impressed by the commitment of the organizers. FLOC (Farm-Labor Organising Committee) was not a typical union. It was a movement of farm-workers determined to create conditions of dignity in US agriculture. Through those months, the organizers met late at night, when everyone returned from the fields. The meetings were designed to discuss the boycott campaign, the obstacles and strategies confronting the achievement of a labor contract for guest-workers in North Carolina. In some instances, I followed the organizers in their long drives to reach the workers in their aging trailers or old barracks.

The first time I entered a migrant camp, it was Sunday afternoon. The camp hosted about two hundred workers. Migrants lived in large bedrooms sleeping each on average ten men. Throughout the building there were only two restroom facilities. Each one had three toilets, three showers and three sinks in a row with no partitioning or privacy. The entire architecture of the building was demeaning. Most of the days, the workers were forced to use the bathroom all at the same time.

1 Quoted in Smith-Nonini 2010.



Figure 1. La Palmita, North Carolina. *La Palmita, Carolina del Norte*²

Bedrooms had no air conditioning, pavements or closets. In those summer days, the weather was hot and humid. There were bugs everywhere. In the kitchen there was no electricity or gas. The unavailability of a kitchen forced the workers to rely on the crowd-leader for buying food. On that day, the workers were off. Even though it was Sunday, there was nothing they could do – isolated from the other camps, miles away from the nearest towns and forced to rely on their supervisors for everything from transportation to food, the workers appeared to be living a *de facto* condition of captivity. In a very Marxian way, the camp seemed to be not designed for humans. It was merely a place to sleep, eat and urinate, useful only to the extent to which the satisfaction of such basic functions was necessary for the physiological reproduction of the labor-force.

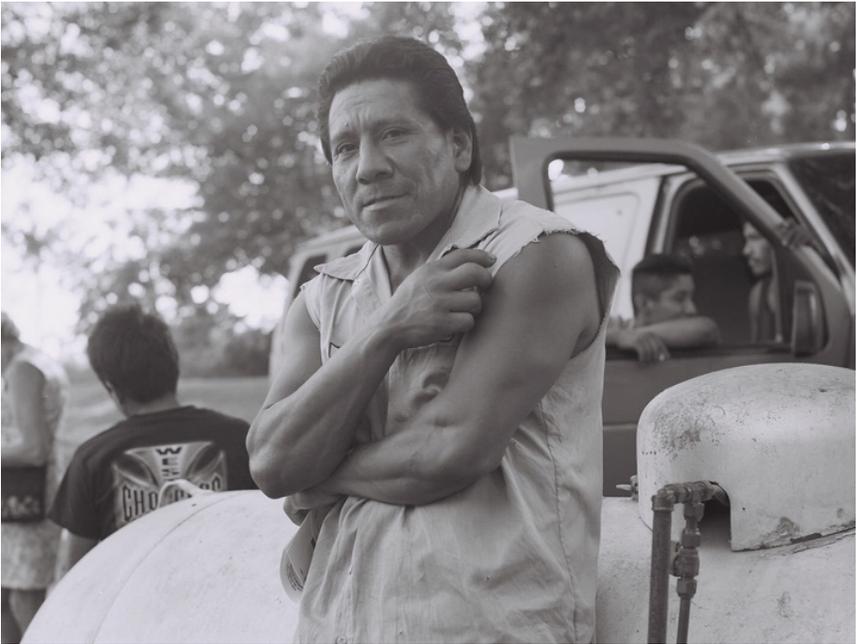
As will be explained in detail in the methodological appendix, between 2004 and 2007 I used the workers' grievances to study the most urgent

2 The following pictures are part of an exhibit developed and curated by the Atlanta Friends of FLOC, 2006. Photography by Francesca Coin. The Walter P. Reuther Library of Labor and Urban Affairs, Wayne State University, Detroit (MI), is the official home of the FLOC Archives.

problems in North Carolina and I integrated them with interviews of the workers and the labor organizers. In fact, it did not take long to realize that the problem was not limited to the camps I had visited along. In general, the grievances are documents which chronicle the problems workers encounter in the fields during their recruitment process and their employment in North Carolina. They are complaints that the workers file to the union staff in order to inform them about the problems they encounter in the fields. While before September 2004 the grievances were collected by FLOC informally, after the introduction of the *Collective Bargain Agreement* (CBA) with the NCGA and MOPC, the grievance procedure became an official tool for the union to work towards the resolution of the workers' complaints in collaboration with the NCGA. Between September 2004 and December 2006, the workers filed hundreds of grievances. Most of these have been recorded and collected in order to allow FLOC to become an active agent in their resolution. Traditionally, most of the violations that occur under the H-2A program have been categorized by the Department of Labor as conditions relating to the risk of double standards for immigrants. These problems include the risks of substandard housing, below-poverty line wages, and health-related hazards. The Department of Labor (DoL) has set out specific definitions for each one of these problems. Given the general concern that the H-2A program could *adversely affect* the wages and working conditions of US workers, the Department of Labor requested the growers to respect the Adverse Effect Wage Rate (AEWR) set every year for each state. At the time of the *Collective Bargain Agreement*, the AEWR in North Carolina was set at 8.06 dollars per hour, which means that the workers picking on a piece-rate basis had to make at least that overall minimum wage. On top of respecting the AEWR, the DoL requires growers to provide all workers with a "three-quarters guarantee", that is to say that they must provide wages for at least three quarters of the hours established in the labor contract. Moreover, growers must provide free housing that complies with the Occupational Safety and Health Administration (OSHA) standards. OSHA regulations require that employers provide access to water, toilets and hand-washing facilities for their employees. The OSHA standards are coupled with the Environmental Protection Agency standards, which regulate farm-worker exposure to dust and pesticides (Oxfam 2004; Holden 2002).

2.2 The Political Economy of Race

As mentioned above, the working conditions of farm-labor in North Carolina are characterized by lack of legal protection. The *Fair Labor Standards Act* (FLSA) sets a federal minimum wage for workers employed on large farms, but it fails to address issues such as overtime pay, day of rest, and work breaks for agricultural workers. The *National Labor Relations Act*



Figures 2-5. Migrant workers, North Carolina. *Trabajadores inmigrantes, Carolina del Norte*





Figure 6. Migrant workers, North Carolina. *Trabajadores inmigrantes, Carolina del Norte*

(NLRA) specifically excludes agricultural workers from the right to union membership and collective bargaining. The Environmental Protection Agency requires that farm-workers be trained yearly in ways to protect themselves from exposure to pesticides and in emergency procedures if exposure occurs, but there is usually no monitoring of workers' levels of exposure as there is for workers exposed to toxic chemicals in other industries. OSHA regulations require that employers provide access to toilets and hand-washing facilities in the fields when groups of eleven or more are working, but often such regulations are not enforced or respected. Despite this, guest-workers are bound by the conditions of the contract (a contract that is negotiated by the US Department of Labor and the employer and that workers have no right to see prior to its approval) to work only for the employer who requests their visa. By law, the H-2A program mandates that the workers must conclude the season with one employer, meaning that eventual dismissal, or the early termination of their contract, would result in deportation and compromise workers' ability to come back to the United States. In order for the workers to terminate the season and provide their families with the necessary economic support, the workers must respect orders, and avoid providing their employer with any potential reason for

dismissal. The legal bond between the workers and their employers thus translates into a “constant blackmail” for these workers, as the workers know that they must keep their head down and work at all times if they want to make it through the season. Such regulation finds a strong complement in the exclusion of women from the program, as their exclusion serves as insurance that these workers will not “take their families and go”, as happens in the case of undocumented workers, but that they will continue to work until the end of the season. As one grower argued: “In this business, when you’re priming tobacco, you need to know your workers are gonna be there tomorrow” (quoted in Glascock 1999).

In this context, the workers are often compelled to finish the season despite the difficulties that they endure. “We don’t have any other option” (quoted in Glascock 1999), said one worker. Blanding (2002) reports similar encounters: “If you speak up for your rights, that will be the last time”. As a Jamaican worker explained, whatever happens:

Don’t gripe about wages and working conditions. Don’t seek the benefits you’re entitled to. Don’t make noise, even when your health is in jeopardy: what you see, you must remain silent.

[...] “If I talk to the boss and say we’re in need of something, he could turn against me and fire me”. “If there’s a chemical sprayed in the field and you think that if you go into that field you would maybe get poisoned, you can’t say anything”, said one worker. (Yeoman 2001)

As attorney at the federally funded Legal Services of North Carolina, Mary Lee Hall explained:

The fundamental problem underlying the program is the degree of control that the employer has over the workers, which is greater even than over undocumented workers: If you are undocumented and you don’t like your job, you can walk away. These workers are coming out of economic necessity and place a premium on returning [to the United States] and being able to bring back that money again. (quoted in Schrader 1999)

2.3 Unsanitary, Unhealthy and Dangerous Conditions

Many grievances revolved around the fact that the housing standards do not comply with Occupational Safety and Health Standards. According to the Housing and Field Health and Safety Standards, there has to be at least one shower head for every ten workers, and the toilet facilities have to be “adequate for the capacity of the camp” (Griev. 56, 2006). Several grievances dated 2005 state that many camps violated the OSHA regulations. One grievance denounced the camp as:

So crowded that two workers are sleeping in the washing area directly adjacent to the bathroom facilities. The only thing that separates these workers' beds from the toilets is a curtain. All workers must walk past these workers' beds to access the bathroom. This is a violation of OSHA regulations, which states that 'each toilet room shall be located so as to be accessible without any individual passing through any sleeping room' [...], and "no Privy shall be closer than 100 feet to any sleeping room, dining room, lunch area, or kitchen" [...]. Only one of the three showerheads works, while according to OSHA standards, there is to be one showerhead for every ten workers [...]; and the toilet facilities must be "adequate for the capacity of the camp. (Griev. 56, 2005)

The workers reported that they had to make a line for the bathroom in the morning. The sewage located just behind the house broke, and waste water came up to ground level. Some of the workers were sent to shovel and fix the pipe, reportedly because the Health Department would not come. Supposedly it was fixed and the broken pipe replaced and moved away, yet the waste odor was very strong and it seemed to constitute a health hazard. The workers also reported that the first aid kit required by housing regulation contained expired medicines; that there was a rat problem in the house; that the smoke detector did not work; that the lighting was very poor; that only three light fixtures worked; and there may have been a short circuit in the wiring because the light bulbs would constantly blow out. In view of this extensive list of housing regulation violations, the workers requested that they be relocated to a suitable alternative suitable housing unit while the original housing was repaired according to OSHA regulations. The workers also repeated that not only were the conditions in the camp hazardous, but there were also health and safety issues in the fields:

The grower does not provide sufficient cups for all the workers, and they must usually drink out of used cups that have been discarded on the ground. They are also not given enough time to drink water, and must run after the truck in order to reach the thermos. They are not given any time to go to the bathroom while on the field and must wait until they come home for their lunch break or after work to go to the bathroom. (Griev. 56, 2005)

The crew leader had told them that he would place thermoses on either side of the field so they would be able to drink more water, yet he had repeatedly failed to do so. As a result, the workers requested that the Association contact the grower regarding conditions both at the fields and at the camp:



Figures 7-8. Migrant camp, North Carolina. *Campamento de inmigrantes, Carolina del Norte*

A significant number of workers have left this camp due to the unbearable living and working conditions over the season, including one worker who was denied medical attention despite requesting it. We are sure that the Association is as disconcerted to hear this as the union is, and wait for a quick and adequate response in order to ensure these workers' health and safety and compliance of Association growers with the law. (Griev. 56, 2005)

After these extensive complaints about the quality of the water supply, the grower assured them that the water was sanitary. The union then arranged that a health department inspector reevaluate the water supply and it tested positive for *Escherichia coli* contamination. A few days later, the NCGA responded that:

We have spent many hours at [the grower's name] camp checking with the workers to insure a successful relationship. All the workers told us they were happy with the arrangements at that farm. Furthermore, Mr. [Grower's name] stated that any worker who wanted their own facilities just ask - he personally informed the workers of this. Please identify any worker who would like to move to a house with a kitchen, there is one available and they will be moved right away (they were told this from the start - ask them yourself). [...] Mr. [Grower's name] has joined with FLOC and NCGA which has significantly raised the level of wages and benefits at the farm for all workers. The workers are happy. That makes me happy - I would hope that would make you happy as well. [...] PS: The workers were not forced to do anything. The workers have not complained to us about anything. (Griev. 56, 2005)

Similar "communication problems" between the union and the association occurred in August 2005 (Griev. 73, 2005), when two workers reported residing in trailers in which the kitchen sinks were clogged. "The two sinks have not been repaired despite the several requests to do so. The workers are unable to do so". NCGA replied that it was normal "wear and tear", and that:

Trouble with the drains in the house is because the workers continue to pour grease in the sink rather than the trash can in order to dispose of it. The grower has unclogged the drain and explained the problem to the workers to the best of his abilities. He said that they continue to pour grease down the drain. He has unstopped them himself until today. He said he would have to call in "professional help to unstop the drains now". (Griev. 73, 2005)



Figures 9-10. Migrant camp, North Carolina. *Campamento de inmigrantes, Carolina del Norte*

In the end, the NCGA solution was to: “advise the workers to dispose of grease and other solids in the waste container and not the sink”. The union spoke again with the workers and advised them to “dispose of grease and other solids in the waste container”, but they replied that this is what they normally do. “If the sinks become clogged again it seems it would be best to call for professional help to determine the cause of the clog, before assuming that normal wear and tear has occurred”, recommended the union. The NCGA responded that “after [Grower’s name] gets the drains unstopped this time the workers will be charged for the next clog due to misuse”.

In another trailer the kitchen sink was also clogged and unusable (Griev. 21, 2005). When the workers inquired, the grower refused to have it fixed and unclogged. In another trailer over fifteen workers had only one small refrigerator for all of them. It took several emails and negotiations just to provide them with an extra refrigerator (Griev. 32, 2004). Twenty-five workers had a similar situation at a different facility (Griev. 33, 2004). Their electrical socket did not work; the screens were broken; the refrigerator did not work; they had no toilet paper; one of their toilets was clogged; some were paid in cash but still were deducted taxes; they were charged to cash their checks; their mattresses were dirty; they were forced to pay 50 dollars a week for food; and they had no phone. Other workers complained that they were forced to withstand temperatures of less than 42 degrees due to low gas supplies. “There has been scarcity of the gas for the heating system in four trailers”, they complained. The *Agricultural Worker Protection Act* requires that heating facilities must be provided when the temperature falls below 42 degrees Fahrenheit (Griev. 71, 2004). In this case the union had to intervene many times until the grower decided to refill the gas tanks. The workers also reported that the two bathrooms in the fields had not been cleaned for an entire month, to the point that they could smell them from a distance. Also, their two toilets in the camp were not working; they could not regulate the water temperature in the shower; and the workers were only provided with medications that had already expired (Griev. 71, 2004). On a different property, the workers reported that there were no individual cups for drinking water; no toilet paper in the fields; no water or soap for hand washing in bathrooms; no access to drinking water and bathrooms in the fields. The law states that there must be water in the fields, that the workers must have ample time to drink and use the restrooms, and that the employer should indicate where all the facilities are in order for the workers to use them as needed. However, the workers complained that the grower established rules that limited their actual ability to use the restrooms; arbitrarily set a maximum amount of time that they could spend in the bathroom; restricted them from taking off their gloves when they were walking from field to field or during breaks; rushed their productivity and constantly moved the truck with drinking water on it. The workers were asking for two ten-minute breaks during

the workday, to be scheduled at 9:00 am and at 3:00 pm, and, since the above violations had saved the grower time and money, the workers felt that they should be compensated in an extra benefit rather than wages or fines. Their other complaint was that the water was warm. When asked to respect these regulations, the grower reportedly “tried to turn them into a joke”, arguing that “if they want ice in the water they’d have to buy it themselves or not drink as much water”. The union organizer who filed the grievance also reported that the grower debated about what “cold” water means, but in the end he had to comply with the rules (Griev. 29, 2004).

In general, the organizers reported that:

All too often, housing is unsanitary, unhealthy and dangerous. The Wake Forest University School of Medicine has found that 40 percent of farm-worker families live in overcrowded housing. The *North Carolina Migrant Housing Act* sets standards for farm-worker housing. These standards, however, are minimal. For example, the *Act* requires one toilet for every 15 residents. This ratio is below what is required in the state’s prisons. It is necessary to update housing standards for the twenty-first century (by ensuring clean and sanitary mattresses on all beds, making sure that toilets and showers at least meet NC jail standards, ensuring there is a telephone for emergency use within at least a mile, and guaranteeing access to kitchen and eating areas, providing locks on exterior doors, and clarifying that migrant workers can have visitors. (Griev. 12, 2004)

A summary of violations submitted by FLOC reported that:

The most common violations include: lack of bathrooms in fields, lack of cold water provided or lack of drinking cups and illegal application of pesticides while workers worked in the fields. [...] Raw sewage was flowing outside the camp. [...] Workers were sleeping on metal frames with no mattresses and the stove did not work. In this case, the workers did not want to make any formal complaints because of fear of retaliation. [...] One worker was actually beaten up for stopping to drink some water. [...] Workers were sold beer while working, which of course is dehydrating [...] There are serious wage violations including workers being the equivalent of indentured servants, forced to work off a debt and not being allowed to leave. [...] The well-known blacklist makes H2A workers more likely than others to be afraid of reporting problems. (Hall, Elmer, Brooke 2004)

Independent journalist Michael Blanding discusses the case of farm-workers hired to pick blueberries, in which Cherry Field Foods was fined 10,000 dollars by the US Department of Labor for unsanitary conditions. He de-

scribes the living conditions of these workers as “abominable, with filthy bathrooms, rodents, contaminated water, and the nearest fresh water one mile away” (Blanding 2002). Most camps:

Lack simple amenities like portable toilets and drinking water in the fields. Housing often consists of broken-down trailers with sewage backing up into the bathtubs. Pay averages from minimum wage to a few dollars above it, and promises made overseas or at the border are broken by the time workers arrive. Some of these workers are kept in line by intimidation and coercion; few complain for fear of being deported.

The US officials who oversee the program warned that: “we see way too many violations, way too many instances of farm-workers not being afforded minimally decent standards and wages in the workplace” (Schrader 1999).

2.4 On Wage Theft

Another problem was the wage structure, the expectations of workers, and the practices of growers. In agriculture, workers can be paid in one of two ways: either by the hour or by the piece. While non-harvest work is almost always paid by the hour, harvest work is often paid by the piece. Given the perishable nature of produce, the piece rate is generally indicated for harvesting, as it pushes the workers to toil faster (Geffert 2002; Goldstein, Leonard 2003). However, both the piece rate and the hourly pay rate are so low that the workers earn wages that are below the poverty line. The Oxfam report shows that under the piece-rate system the workers have to toil faster in order to earn the minimum wage (Oxfam 2004, 12). This system particularly discriminates against those workers that are older or sick and thus work slower than others (12). While on paper all the workers should be able to earn a minimum wage, “many farm-worker advocates report that hourly wages of farm-workers paid by piece rate, or a fixed lump-sum per day or week, are misleading” (12). The Oxfam report carries the example of a North Carolina worker who receives 40 cents for every bucket of tomatoes, and 52 dollars for picking 140 buckets in six hours (12). If we consider the rainy days, states the report, the breaks, and the involuntary waiting times that are so typical in agriculture, the piece rates often remain below the minimum wage, and not only have these rates remained stagnant over time, but they also represent “a drop in real wages from the rates paid two decades ago” (12).

On top of these low wages for both hourly work and piece work, guest-workers do not earn money when they are sick, when it rains, when the crop is small, and often work for fewer hours than their contract mandates (Geffert 2002, 125-6; Goldstein, Leonard 2003). FLOC organizer A.

explained that North Carolina growers regularly hire twice the number of workers that they need during the season. Since H-2A workers harvest perishable goods, growers often make sure that they have a “reserve army” of workers to use during season peaks. Thus, “unemployment and underemployment are endemic among farm-workers” (Yeoman 2001). As a result, many workers remain idle for days or even weeks during the summer season. In this sense, not only do workers suffer from low wages, but they are also afflicted by labor oversupply, and often they are not reimbursed under the three-quarters guarantee. The three-quarters guarantee is intended to ensure that workers are compensated for at least three quarters of the hours that are mandated by the labor contract, with the very aim to prevent the workers from being overly impacted by the endemic underemployment of farm-labor. However, as we shall see, violations of the three-quarters rule are frequent in North Carolina. As a result, the Oxfam report warns that half of farm-workers in North Carolina earn less than 7,500 dollars per year, and half of farm-worker families earn less than 10,000 dollars per year, bringing a large percentage of farm-workers families below the poverty level (Oxfam 2004, 8). It is not rare that workers in North Carolina rely on food stamps to eat, as many of them do not make the minimum wage. According to A.:

Legally the minimum wage of H-2A workers is 8.06 dollars, but... a lot of workers don't make even that little. I was talking to a worker yesterday and his complaint was that he woke up at 6 am and worked for 3 hours. Under the H-2A program you don't have the ability to leave that grower without the grower's permission. Sometimes there's no demand for labor and they don't work at all. I talked to some workers today and they all said that they started at 5 and worked until 3. So they worked ten hours. But other times they don't work for 4 days. So you have both workers that overwork and workers that don't work at all and make no money.

All of these conditions came up in the grievances. The greatest problem that emerges in the 2004 grievances is, however, workers' wages. Only within the one month from September 16, to October 16, 2004, many workers reported that they were not paid for the amount of hours that they actually worked. At one camp the workers complained that they were not being paid each week; their hourly pay was 7.00 dollars instead of 8.06 dollars; and at times they were forced to stay idle for entire weeks (Griev. 3, Sept. 04). One worker at a different farm reported that his grower was asking him to work for 11 hours straight every day but paid him for five (Griev. 8, 2004). Five workers reported that their grower owed them a total amount of 600 dollars (Griev. 11, 2004). Seventeen workers at a different farm found that they were missing hours for a total amount of 1,378 dollars in lost wages, but they were being forced to sign a paystub stating that they agreed that

their hours and pay were correct (Griev. 10, 2004). One worker claimed that he had worked Sundays for a number of weeks but his grower failed to pay him. He claimed a total amount of 950 dollars in lost wages, but his grower never answered his phone calls and refused to pay him (Griev. 14, 2004). In 2004, Legal Aid contacted FLOC to refer a complaint from workers located at a camp in Yadkinville. The workers stated that by the contract they should be paid on Sundays, which was convenient because they could go to the store. When they demanded to be paid on Sunday after several weeks of negligence, the grower told them to “get their stuff and leave”. The union called the grower who responded that he did not fire the workers, but thought that the workers were going to leave. He said that it was a “communication problem”: one of the many “communication problems” that happened at the workers’ expense (Griev. 16, 2004).

In July 2004, one worker reported that his crew leader had threatened him at gunpoint for asking for a break and then had fired him. The worker had not received his payment and was told that he would not be paid. The grower owed him 611 dollars (Griev. 18, 2004). It took several weeks of negotiation between the union and the grower before the worker received his payment. Other workers at a different camp complained that they were making less than 8.06 dollars an hour. Only after the union demanded that they be paid fully, did the grower start paying more than 8.06 dollars to make up for the previous week (Griev. 21, 2004). A similar case involved ten workers who reported that they were not enjoying the “three-quarters” guarantee. In 45 days, they had only made 1,242 dollars. When FLOC reported the problem to the grower, he said that he was also upset about the harvest but that he would do whatever he could about the guarantee, but he “couldn’t promise”. Eventually the workers were paid, but it took several weeks for the union to make sure that the grower complied (Griev. 23, 2004). Similarly, in 2005 fourteen workers reported that their grower was not paying them the correct amount of hours. The grower gave FLOC the records for the sweet potato harvest but there was a large discrepancy between the hours reported in his records and the hours reported by the workers. When the workers complained about the missing payments, they were fired and forced to leave camp overnight. Their crew leader was apparently trying to force them to leave the camp immediately and without compensation, arranging a ride for which they were supposed to pay. On that occasion, the workers also complained that they were being paid in cash; taxed; not allowed to use the kitchen; forced to pay 60 dollars a week for food and seven dollars for sodas; forced to sleep on the floor without a bed; forced to pay an additional 150 dollars for their transportation from North Carolina to the camp; forced to live at a camp that had an insufficient number of bathrooms and showers; and to work without hand-washing facilities in the sweet potato field. Apparently, the workers proved that the grower owed them payments for a total amount of 600

dollars. Referring to the large discrepancy in the pay stubs, the grower suggested that: "somebody could go to jail over this [issue] and that might be me". A few days later, therefore, he decided to write checks for all of the workers, and to pay the difference he owed them (Griev. 5, 2005),

In general, the grievances show that on many occasions the workers were not making the minimum wage in North Carolina. One of the problems that characterize the working conditions of H-2A workers in North Carolina is the very disregarding of the Adverse Effect Wage Rate (AEWR), and the failure to provide the workers with a payment that is consistent with minimum wage regulations. In 2004, one worker employed in Myrtle Beach, North Carolina filed a complaint arguing that his grower owed him a total of 950 dollars. For months, he had attempted to recover his back wages but his efforts had proven fruitless. At that same camp, there were over a dozen workers who shared the same problem but they had not filed any claim due to a combination of fear and hopelessness. Apparently the grower had never filled out the necessary paperwork for his employees and refused to give out accurate information about his business (Griev. 30, 2004). On a different case, six workers filed a wage grievance against their grower, who apparently failed to pay them minimum wage. In response to their phone call, the grower allegedly threatened the workers that they would be deported if they kept making these demands. The following day the workers were told not to work in reprisal for filing the wage complaint, and told that they would be sent home without reimbursement. The union required that the grower settle with the workers, reminding him that by law a worker cannot be fired or punished for submitting a grievance. A few days later the workers reported yet another violation at this camp: apparently there was no record keeping of the working hours; the camp was overcrowded; and the most vocal union supporters were discriminated against and often denied the right to work due to their affiliation with the union. The union explained that according to Title 20 of the Federal Code of Regulations Section:

The employer shall not intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against, and shall not cause any person to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against, any person who has with just cause: exercised or asserted on behalf of himself/herself or any others a right or protection afforded by section 216 of the INA. (Griev. 41, 2005)

In fact, this was not an isolated case. In several cases, the workers complained they were not paid for their actual hours of labor. "You know how we cheat them? We fuck 'em on the hours", candidly confessed one grower to Yeoman (2001), an independent journalist. In other instances, the workers reported that labor was distributed unevenly among the workers, depending on their political views. Often times, workers that were active with

the union complained about being discriminated against. On one occasion, twelve workers complained that they had not been asked to work for two weeks. The workers demanded that the work be distributed equally among all workers without giving preference to some and discriminating against others. The workers that were not being asked to work were all affiliated with the union (Griev. 37, 2005).

2.5 Death in the Fields

In the fields, like in the camps, one of the greatest problems for H-2A workers was the lack of drinking water. Throughout their interviews, the workers reported that the lack of drinking water was one of their major concerns. Alejandro talked about a combination of problems:

The injustice is that they try to pay us in such a way that it is not adequate for the work we do. They try to pay us less than the hours we work. They don't do anything about dehydration in the fields. They don't give us water in the fields while we are working and the situation in the camps is not adequate as well. We don't have ventilation there, we don't have telephones or any way to communicate, and then they threaten us. Now with the union we are somewhat protected, but they still threaten us.

According to José, the grower is the law in the fields, and the grower does not appreciate that the workers need to stop to drink during their shift:

For what you are paid... you have no freedom there. You don't have the same freedom there that you have here. You cannot leave. You cannot move. There's nothing you can do. If you leave the camps they can catch you. The grower doesn't want anyone to leave the camp and anybody to come to the camp. The grower is the law. For example I love music and the grower doesn't like music. I used to turn the music on but the grower didn't like it, so I had to turn it off, because when he doesn't like something he just fires you. He makes you go home and he doesn't call you back. I had some fellow workers last year that didn't work the way he wanted them to work so he didn't pay them. Sometimes there are a few people that they don't like, and so they fire them. One year there were about 50 of us in the camp that worked all day, but other workers never worked. They asked the grower to work but the grower wouldn't let them. So they spent the season there but they were not paid. That time there were a total of 100 workers under the same grower. We shared everything. We used to pay 30 dollars each for our meals. In the fields the grower gave us the cooler for water. Now that we have the union it's much better. Until a while ago you had no union, nothing. It

was hard. The work is hard. It's *puro trabajo*. Only labor, only, only labor, and a long time without seeing the family.

Alfonso complained that in many places "you cannot drink water. You have to drink your own sweat, because you need water".

So far I have been to the US for 8 years. It's been a struggle. It's hard, it's hot. In tobacco you have to work a lot, but there's no drinking water. There are places in which you cannot drink water. You have to drink your own sweat, because you need water. The other thing is the use of pesticides. When I work there I work with pesticides. Always pesticides, but I know that they do something to me because I cannot breathe. I am 45 now, and this work doesn't do me good. Sometimes I am so tired and I need to rest. But I can't rest. Sometimes I have a headache. Sometimes I am sick, but nevertheless I must work. So many things happen, but still you have to work, even if you don't eat or you don't drink. So many things happen in those fields: people get injured. So many people get injured. I've seen so many people there that get injured and sick. Then they discriminate against us because we are Mexicans. When they know that you are Mexican they think that we are worth nothing. But we are making their country better because we are working for them. And the US is a hard country to live in. It's hard. We are Mexicans and we are working there, we are struggling there, we are doing our job there. Still they treat us bad. Still they say that they don't want us there. Still they don't give us water. Still. Here in Mexico it's hard, but there it's worse: we get paid there, but it's hot, it's humid, it's hard.

Pablo declared that his employer did not provide water facilities at all:

In the past years I have worked for different growers. [Grower's name] paid me by the bucket instead of paying me by the hour, as the contract said. That was a problem because I had to work much faster in order to make a minimum wage. I didn't have that big a problem because I was young: I did 20 buckets an hour or even 25. Sometimes it was convenient, but the older workers couldn't do it. I had colleagues that were slower than me, They did 18 buckets an hour. For each bucket they paid us 40 cents, whereas for every hour they paid us 8.06 dollars. So we had to pick at least 20 buckets to get the minimum wage. So we asked the *patron* to pay us by the hour because the majority of us couldn't reach 20 buckets. That was exactly why he paid us by the bucket. Anyway we won. The grower paid us by the hour. But that was only because we had the union. The year before the grower also didn't pay us what we deserved. He should pay us at least for 30 hours a week, which is at least 5 hours a day, 6 days a week. But he paid us only for 4 hours a day. So I was earn-

ing something like 240 dollars a week, while my brothers were making 420 dollars a week. So I asked to be changed, and they moved me to a different grower. Yet there was no water in the fields. In the camps it was hot, and we didn't have ventilators or air conditioning. The other problem that we had was that the growers didn't give us proper equipment to work. Say for example that you are working with pesticides and they don't give you the masks: you're going to start coughing, it's not healthy. Then in the camps we couldn't use the kitchen, so we had to buy food from the majordomo. Those of us that do have a kitchen many times they have no plates, no forks, no knives and no glasses. The only thing they give you is a refrigerator. But they don't give us anything else, so even if we do have a kitchen we don't have the burners and we can't cook, not to say that we need to buy forks and plates and food... So it's expensive. It's expensive to work there. For the past three years I was never able to cook my own food. There was only one worker that was allowed to cook, and he would sell us food for 55 dollars a week. For each person.

Geraldo described the situation in North Carolina to be one of the most difficult that he has ever experienced. He complained that the growers asked the workers to do more labor than they could physically handle, in any weather condition, and without water. In the fields there is no water, he said. For that reason three years ago he decided to call Legal Services. Lawyers from Legal Services came to the farm and prohibited the crew-leader from selling beer to the workers. After the visits by Legal Services lawyers, the workers who had called them were blacklisted. In fact, Geraldo had been blacklisted before that event. He had been blacklisted when he went to a local church to ask for help because "the crew-leader threatened us". Reportedly, both the crew-leader and the grower had threatened Geraldo and his co-workers. When they went to the NCGA to report the problem, "the association told us that we'd better shut up and keep working or they would call the police and the police would deport us". It was then that they found refuge at a local church, where the minister helped them. Geraldo had not been back to North Carolina since that event. He was afraid to go back and he was afraid about telling me this story. It took him several days before he decided to share it with me.

In 1997 I had the opportunity to go to North Carolina. I had never been to the US before. I was afraid. My friend used to tell me that they treat people bad there, so I was afraid. When I went there it wasn't easy. The association and the legal services know that they pay us badly. They treat us with violence... [sighs] threats. Verbal threats. I've had several problems there.

The representative of the association forbade me to go to the church and he said that if I kept going to the church I could have problems af-



Figura 11. Migrant farm-worker, North Carolina. *Trabajador inmigrante, Carolina del Norte*

terwards. There were good people at the church and they were helping us. But they threatened us. Many times I was close to giving up. Many colleagues went back to Mexico because they were mistreated, and because they couldn't handle the amount of work. It was not the amount of hours alone; it was the intensity and the speed that they demanded from each of us. They asked us to do more labor than we physically could handle. In the heat, in the rain, without water. They asked that we work so much. They kept asking for more. They asked for more production, more tobacco, more production, more every hour. And at the same time they didn't give us the possibility to drink water, so we couldn't drink water. We didn't have any water as well, just beer and soft drinks. They sold us beer because they can sell it for profit, whereas they can't sell water for profit. So they would sell us beer and soft drinks, but not water. A lot of people ended up drunk. If you work under the sun without water you either get dehydrated or drunk, and if you get drunk it's very dangerous, because you may injure yourself and everyone else. It's very dangerous, but nevertheless the crew-leader sold us beer.

At the camps we used to have a kitchen but it was closed. It was open only at particular times. If you didn't eat during those times you could not eat at all. They sold us dinner for 45 dollars a week, but that did not include

water or anything to drink. So we asked for the help of Legal Services. This happened three years ago. Legal Services came on the fields and talked to the crew-leader. There were also other inspectors. They prohibited the crew-leader from selling us beer. But after we spoke to Legal Services we all ended up in the blacklist. Actually, I was in the blacklist before I talked to Legal Services, because the Association prohibited me from going to Church. They put me in the blacklist because they didn't want me to go to church. So when my contract was over they said that they'd never call me again. When I learned that they wouldn't call me anymore I called Legal Services again. The thing is that I was going to Church because the crew-leader threatened us. At the church there were people that could help us. When the grower threatened us, we went to the association to report the problem. We thought that the association would defend us, but the association told us that we'd better shut up and keep working or they would call the police and the police would deport us. So the association threatened us too. We were asking them for help because our crew-leader and the grower threatened us, and they ended up threatening us too. At that point we had to leave because we were told that the grower would call the police and deport us. We were afraid. So we left. It was the four of us, and we ran to the church and the minister helped us. Then the minister talked to the association and they sent us to another grower. Had he not talked to the association I don't know what we would have done: we had no place to sleep, no place to go, no work, nothing. But at that point we were all blacklisted, and the association treated us badly.

I haven't been there for two years since. They didn't call me back last year because I was blacklisted. Now with the introduction of the new labor contract and the union they were forced to call me back, but now I am afraid to go. I know that I should not be afraid, because I can call Legal Services again, and because I know that I can always ask for help at the church and there is the union now. But still, I am afraid. My wife is afraid too because she thinks that they are going to retaliate against me for what happened in the past, because I called Legal Services and caused them so much trouble. She thinks that they will take some action against me. That's what she and my children think. That's what I think too. But I am going, because I need to. Here in the past few years there have been less and less opportunities. There is more competition, so for one job opening you have thirty people competing with you. So I have to go. I only hope that they won't harm me. Harm me with threats... I don't know what they can do to me.

Geraldo was afraid to go back to North Carolina. He feared for his health and for his life. According to one organizer, the workers have several reasons to be concerned about their safety. Not only in many cases were they threatened with blacklisting or deportation, verbally or at gunpoint

but many times they suffered under inadequate working conditions, such as the use of pesticides or the lack of drinking water. More than once, these conditions became very dangerous for the workers. A few times they have been lethal. Urbano is one of the workers who died in North Carolina due to the lack of drinking water. This is what union organizer A. said about him.

A: Urbano, he was literally worked to death In North Carolina. He was working in late June, in North Carolina, harvesting crops. He was working for 12 to 14 hours a day. Workers didn't have any access to water. Frequently they had no rest breaks. So Urbano worked until he was physically... until he couldn't work anymore, until he couldn't harvest anymore cucumbers or tobacco. He suffered a heat stroke and after two weeks, only two weeks after his death was he taken to the doctor.

Q: What did the doctor say?

A: That the cause of the death is unknown.

Q: Why is it that they don't have water?

A: Because when the workers ask for water the *contratista* sells them a beer.

Q: So they can't have water?

A: They can't have water but they can buy beer.

Q: Buy beer?

A: Right. So when you're working 14 hours shifts in June in this type of weather...

Q: It's gonna kill you.

A: Right it did. The DOL withdrew the investigation in December. After Urbano died their files said that that unit was working in late June and didn't have access to water. [...] I was talking to a worker yesterday and they have the same problem. Apparently the workers were working and there was a truck in the fields and the truck was moving constantly. The water was in the front of the truck but the truck wouldn't stop to let them drink, so they had to run in front of the truck and try to move with the drinks truck. It's a very vindictive, humiliating process where they don't even stop the truck to let them drink water.

Q: How hot is it here?

A: It's 90 some degrees with high humidity. It's hard to imagine being out all day with no shade, completely exposed to the sun when there's no water.

The case of Urbano became well known in North Carolina, and it probably represents one of the darkest moments in the recent history of farm-labor. Urbano exhibited signs of heat stroke in July 2001. His body was only found two weeks after his death, when his co-workers found his remains in the field. A similar case occurred in 2005, when Pablo died some time during

July 19 or 20, 2005. The date is not certain, because his body was found on a soybean field between one and two days after his death. Apparently both workers died from heat stroke and dehydration. Pablo was hired on July 11, 2005 to work in the tobacco fields in Person County. He lived in a trailer located at walking distance from the tobacco fields, which required him to walk through a soybean field to go to work. The grievances contained a lawyer's report. According to this report, on July 20 Pablo was feeling sick and was told to return to the residence. He departed towards the residence at around ten in the morning. When his co-workers returned to the residence that evening he was not there. On the afternoon of July 22, 2005, his co-workers found his corpse, at the time "severely decomposed at the end of a long week of severe heat at the edge of the soybean field", says the report. The body was examined by the Medical Examiner, who declared that the cause of his death was undetermined. The North Carolina Department of Labor began an investigation on July 26. The investigation resulted in citations for a serious violation for failing to provide the employees with:

Conditions of employment and a place of employment free of recognized hazards that were causing or likely to cause death or serious physical harm in that the workers were exposed to heat-related hazards without adequate provisions to protect them. (Griev. D1)

Among the adequate provisions that the employer failed to provide were "permitting workers to drink at liberty" and not developing a "heat stress program". Under the citation, there were items indicating that the employer failed to inform the workers of the importance of drinking water frequently on hot days. The workers were in fact discouraged from drinking water frequently, even when temperatures were dangerously high. After examining data from the State Climate Office of North Carolina; the Report of Investigation by the Medical Examiner; the Report of Autopsy examination; and the incident Investigation Report by the Person County Sheriff Department, the lawyer concluded that the conditions in which Pablo was working were sufficiently hot to increase the risk of a heat-related disorder for Pablo and his co-workers; and that it was:

More likely than not that the working conditions significantly contributed to [worker's last name] becoming too ill to continue working in the field on July 20, 2005. That it is more likely than not that [worker's last name] left the worksite feeling ill due to the hot working conditions, got part way to the residence and collapsed in the field. That it is more likely than not that before, or soon after collapsing in the field, [worker's last name] suffered from heat stroke, stopped sweating, had a continuous rise in body temperature, leading directly to death from being overheat

ed. [...] The normal progression for occupational heat disorders is for the worker to develop symptoms of heat exhaustion initially, followed by the more serious heat stroke. During heat exhaustion, a person continues to benefit from the cooling effect of sweat. Workers can recover from heat exhaustion by resting in a cool place and drinking plenty of fluids. If a worker with heat exhaustion does not stop to rest and re-hydrate, but instead continues walking or working in the warm or hot environment, the body's thermoregulatory control mechanism can be overwhelmed, resulting in heat stroke. [...] The progression described here fits very well with the facts in this case and all of my opinions. (Griev. D1)

After receiving news about the death of Pablo, FLOC organizer A. went to his former labor camp to offer support to the five remaining workers, and to investigate the circumstances surrounding his death. "The purported cause of death was a heart attack, yet many questions still remained in regard to the events surrounding the tragedy", reported the grievance. As A. was at the trailer where the workers reside, the grower arrived and demanded that he leave the premises immediately. A. explained to the grower that under the CBA he was permitted to be at the labor camp because the union was the exclusive representative of all H-2A contracted workers in the state. Under the CBA he had the right to be there and to do

His job as a union representative, investigating the circumstances of Pablo's death and consulting with co-workers regarding their condition after stumbling upon Pablo's decomposed remains some two days earlier. (Griev. D1)

Despite A.'s explanation, shortly after his arrival the grower called the authorities. Person County sheriffs informed the grower that they could not arrest the organizer unless there was a warrant out for his arrest. The grower drove into the town of Roxboro, where the Magistrate granted him a warrant for A.'s arrest. FLOC organizer A. was put in a holding cell and released just over two hours later when another organizer came to post the bond. A few days later, the autopsy reported that the cause of death was "unknown", largely because the worker's body was not found for two days after his disappearance. According to the five co-workers, the worker "died due to the grower's negligence and failure to provide medical attention to Pablo" (Griev. D1). The Department of Labor investigation found that "the grower did not provide adequate drinking water to employees", and that he specifically "discouraged and reprimanded workers for stopping to drink" (Griev. D1; NCC 2007). The lawyer also had a written statement from one former co-worker saying that Pablo was reprimanded by the grower for drinking water shortly before his death (Griev. D1; NCC 2007). At the time of death Pablo had two children, both under the age of 18, and

his wife was pregnant. After his death, his widow started working “at a sweatshop in Durango, to provide for herself and her sons. Her baby was born in October of 2005 and then died in December 2005” (Griev. D1).

In 2005, Pablo’s death came only two days after the death of another worker, Rito, who died in University of North Carolina Memorial Hospital in Chapel Hill from a heat stroke on July 20, “following a week of record 100-degree temperatures in North Carolina”. Rito was a 56-year old farm-worker from Zacatecas, Zacatecas, Mexico, who suffered a heatstroke on Monday, July 18 while working on a tobacco farm in Harnett County. At the time of death, Rito had eight children all over the age of 18. FLOC records on Rito report that:

Rito had no desire to or interest in returning to work in NC, and was hoping to be able to remain in Zacatecas with his wife and extended family during the final years of his life. But Rito’s economic reality, which is currently that of the vast majority of post-NAFTA Mexican farm workers, drove him to do something that he himself knew he had no business doing, given his age and health (he was a heavy man): work in tobacco in NC in more than 90 degree temperatures, in July. Rito died of heatstroke, according to his autopsy, though he also died of NAFTA, and inhumane trade policies. He died within two weeks of arriving in NC, in 2005. His son, Benjamin, has never been the same, at least the last time that I saw him, after his father’s death. Before Rito’s death, Benjamin was one of the strongest union members and leaders in the Triangle region. After his father’s death, Benjamin resorted to drinking heavily and became increasingly withdrawn and reclusive. (Griev. D2)

In 2006, another worker, Juan, died on or about August 1 and also from heat stroke while harvesting tobacco in Wayne County. According to the NC Department of Labor investigation:

The employer did not furnish to each of his employees conditions of employment and a place of employment free from recognized hazards that were causing or likely to cause death or serious physical harm to employees, in that employees were exposed to heat-related hazards without adequate provisions to protect them. (Griev. D3)

The investigation also found that

Twelve migrant farm-workers were exposed to heat indices of 105-110 degrees without the opportunity to adequately hydrate or cool down” and that subsequently one worker died of hyperthermia. The grower has contested the findings and the proposed penalty of 2,100 dollars [...] the apparent worth of the workers’ life and health. The Workers’

Compensation claim is currently being denied by the grower's insurance carrier. (Griev. D3)

Two weeks later, on August 15, 2006, another worker, Mario, died due to a tobacco machinery accident. In July 1995, another worker, Raymundo, exhibited signs of heat stroke before he disappeared (NCC 2007). His skull was found only several months after his death. In August 1998 Carmelo was picking tomatoes when a heat stroke caused him severe brain damage. He has been defined "brain dead" ever since (NCC 2007). In August 4, 2004, an African American farm-worker died in Harnett County of heat stroke. Mario died in Johnston County at the end of the summer in 2005. FLOC records show that Mario left his wife, a daughter in middle school and a son in elementary school. Since Mario's death, the extended family has been helping them economically. According to FLOC records, Mario's cousin declared how the family suffers "when someone goes to Carolina and comes home in a box" (Griev. D4).

2.6 Compensation (or Termination) for Work-Related Injuries

According to Geffert, farm-labor is one of the most dangerous jobs in America (2002, 122). Farm-workers suffer high rates of workplace accidents, including accidents during transportation to the worksites in overcrowded, poorly maintained vehicles provided by the farm-labor contractors. The extensive use of pesticides and toxic chemicals leads an estimated 300,000 workers to suffer pesticide poisoning and toxic chemical injuries each year (Oxfam 2004, 8). Farm-workers are also at great risk of such illnesses as lead poisoning, parasitic diseases, and gastrointestinal infections, as well as toxic burns resulting from exposure to pesticides. Dangerous machinery, strenuous labor and exposure to pesticides and other chemicals contribute to make farm-work one of the most accident-prone industries (Oxfam 2004; Rothenberg 1998). Picking crops requires lifting and carrying heavy containers such as sacks, crates or baskets to a central holding container or truck in extreme conditions of heat and cold. Workers suffer from muscle strains, back pain, dermatitis from exposure to chemicals and plants that exude toxic chemicals, and injuries from performing the same repetitive motions for hours on end. Health problems may be exacerbated by the workers' poverty, by the fact that the perishable nature of the crops requires long hours of work, from sunrise to sunset, and by the fact that migrant workers usually have no health insurance through their employers nor do they earn enough to purchase it.

Despite these problems, workers often do not receive compensation for their sickness or injuries, and sometimes are fired if they cannot work due to health-related problems. During the second week of tobacco trimming

in North Carolina, the same week of Rito's death, one worker was injured and given a six-week sick leave due to an infection that resulted from a cut to his finger and harvesting various crops without gloves. Another worker suffered from rashes and tobacco sickness. He was given doctor's orders to rest from work for approximately 22 days, but was pressured into returning to Mexico by his employer and the NCGA. By law, workers that are injured on the job should be compensated. In many cases, NCGA issued a written statement for unsatisfactory work, refused to compensate the workers and sometimes blacklisted them for falling sick. One worker who had a back injury was reportedly compelled to leave for Mexico without even his last paycheck and without treatment (Griev. 66, 2004). One worker went to the doctor on September 2004 for back pain:

He lasted until he couldn't work anymore, and went to the clinic. The doctor gave him a prescription for medications and told him not to work for 7 days, but the grower told him that he didn't want him there if he couldn't work.

In the end, the worker had to sign a voluntary renunciation form and leave for Mexico (Griev. 61, 2004). Another worker left North Carolina in 2004 due to a workplace sickness that had been substantiated with the proper documentary evidence, but due to his sickness he was blacklisted and categorized as ineligible for 2005 (Griev. 65, 2004). In 2005, a worker who had suffered a work-related injury and had been told by the doctor not to work for at least ten days, was ordered by his employer to "return to work or quit" (Griev. 87, 2005). The grievances show that many workers were injured in the fields but never taken to a clinic as well as being denied reimbursement for their medications. For example, one worker who injured his chest while picking sweet potatoes was taken to the clinic but had to pay for the appointment and the medicines. His grievance reports that the worker was running to empty a sweet potato bucket when he ran into a co-worker whose bucket hit him in the chest. After the incident, he asked his grower to reimburse him for the doctor's appointment and the medications, but the grower argued that this was not a workplace injury and that the worker was "lying" (Griev. 41, 2005). Another worker caught his thumb in the tobacco press and had to file for permanent partial disability. He was never able to receive his partial disability rating during the 2004 harvesting season because his employer ordered him to work any time he had an appointment with the doctor (Griev. 18, 2005). In September 2004, another worker complained for two weeks about a pain in his kidneys. For two weeks, he requested to be taken to the clinic. For a long time his crew leader refused to take him. The crew-leader informed him that he would take the worker "one day when it was raining". In the end the worker was told that: "you are not my mother, we are not even relatives and for me you

candie". When he was finally taken to the clinic, the worker was diagnosed with a possible herniated disc resulting from a workplace injury. According to the doctor, the worker had a workplace injury that had developed and aggravated over the course of the 20 days of not being taken to hospital. His case was assigned to a lawyer, and the worker was eventually paid 50 dollars for his lost day of work, while the insurance company paid him about a month's unemployment compensation (Griev. 65, 2005). According to the grievances, the workers' injuries were used several times by the grower as an excuse for dismissal, or to blacklist them and not rehire them during the following season. One grower reportedly decided not to rehire a worker due to his back pain (Griev. 15, 2005). Another grower did not give a preferred status in the recruitment order to a man that had worked for him for four years, because in 2003 he had to go home sick due to head and neck problems. In general, FLOC reported that there was a tendency to fire and blacklist workers due to their sickness or injuries, especially when they were union members (Griev. 25, 2005). On the opposing side, NCGA suggested that FLOC helped the workers manufacture injuries and sickness in order to guarantee them the right to return to work in North Carolina:

It appears that there is a disturbing trend evolving that all workers who are warned, terminated or are leaving of their own accord are allegedly injured if FLOC is involved. This appears to be a circumvention of the CBA in an effort to credit workers with seniority as well as guaranteeing their return. This strategy drives our comp insurance rates up, casts doubt on workers who really are injured and rewards workers who are deliberately breaking the contract. It will also lead to a reduction in the use of the program.

