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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5 Labor Representation in a Right-to-Work State

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> In our glorious fight for civil rights, we must guard against being fooled by false slogans, such as 'right to work.' It is a law to rob us of our civil rights and job rights. Its purpose is to destroy labor unions and collective bargaining by which unions have improved the wages and working conditions of everyone.
> Martin Luther King Jr.

> Calling it right-to-work is like calling drowning right to swim.
> AFL-CIO

5.1 The *Collective Bargain Agreement*

In 1999, FLOC launched a boycott campaign against the Mt. Olive Pickle Company (MOPC), the second largest pickle company in the United States and the main competitor of Vlasic food in Ohio. The FLOC campaign sought to reach a three-way agreement with the company and the NCGA, which would improve the workers' wages and working conditions. On September 16, 2004, farm-workers in North Carolina signed the first labor contract for guest-workers in United States history.

> On the anniversary of Mexican Independence, three H-2A workers, Adrian Briones, Juan Manuel, and Jesus Martinez, President of FLOC Baldemar Velásquez, Bill Bryan, President of the Mt. Olive Pickle Co., and Stan Eury, President of the North Carolina Growers Association, signed a labor contract for over 8,000 Mexican guest-workers in North Carolina. This contract is a historic achievement for immigrant workers in the United States. It chronicles the first time guest-workers have won union representation; the first time guest-workers have won a labor contract; and the largest contract in the history of North Carolina, the least unionized state in the US Exactly three years after the vigil

> held for Urbano Ramírez, the worker that died in the fields due to heat stroke and dehydration, the farm workers in North Carolina have made it explicit that they will not allow any more violations of their rights and dignity. (Coin 2004, 4)

In fact, the contract gave new rights to H-2A workers and new responsibilities to the growers. It required that workers with seniority be given priority in the recruitment process and that union workers be given preference over non-union workers; it required that the workers be compensated for their trip from and to Mexico; that the MOPC pay the growers more for their cucumbers and that in turn the growers give the workers a 10 percent wage increase in three years (Coin 2004; Chavez 2004). The labor contract transformed the social relations of production in the North Carolina food-chain. While in the past the primary function of the H-2A program was to help growers cut their labor costs, H-2A workers had now obtained better wages and working conditions. The labor contract gave workers the right to demand better working conditions without fear of retaliation. But for growers the situation was different: now not only were they under economic pressure from the US agribusiness, but they were being pressured from the bottom by the workers, who demanded better wages. The following chapter explores how the North Carolina growers have reacted to the introduction of the labor contract; it considers the latter's impact on the farm-workers covered by the *Collective Bargain Agreement* (CBA), and analyses the ways in which North Carolina growers have responded to the labor contract with new policies of cost-externalization and several violations of the collective bargain agreement.

When the agreement was announced, union officials said that it was the beginning of a new era: farm-workers finally had the right to demand better working conditions without fear of retaliation. At the end of last year's growing season:

> Workers gathered at a forum in Raleigh and said their relations with farmers had vastly improved. Many said they had better housing, more breaks and several other new amenities. They recounted stories of asking their employers for concessions – a car for workers to use, the rescheduling of their duties – and, for the first time, getting 'yes' for an answer. (Fitzsimon 2006)

Alejandro declared that: "now with the union we are somewhat protected, they still threaten us but we are protected". According to Thomas: "now that we have the union it's much better. We don't have to pay 30 dollars each week for our meals. The grower gave us a cooler for water. Until a while ago it was much harder". Even Geraldo said that:

Figure 18. September 16, 2004. Contract signing celebration, North Carolina.
Septiembre 16, 2004. Celebración de la firma del contrato, Carolina del Norte

> Last year they didn't call me back because I was blacklisted. Now, with the introduction of the new labor contract and the union, they were forced to call me. Now I am afraid to go but I know that I should not be afraid, because I can call Legal Services, the church, and there is the union now.

This chapter addresses the question of how the growers reacted to the demands of their newly unionized labor force; what determined the dynamics of the three-way relationship among the farm-workers, the North Carolina Growers Association and the Mount Olive Pickle Company; and whether the successful negotiations indicate the possibility of constructing an alliance between people in different class positions such as growers and farm-workers.

5.2 Unions Make Harvesting Unprofitable

After the introduction of the CBA, the workers enjoyed a few improvements in their working conditions. In contrast, farmers complained from the start. Already in 1998, one North Carolina grower had declared that if "FLOC is successful with its unionizing drive […] that would make it unprofitable to harvest cucumbers" (quoted in Steinberg 1998). After the introduction of the labor contract, many growers left agriculture altogether. Many growers left the NCGA. A few growers changed their production to crops that did not involve manual labor – this decision mostly involved farmers that left the tobacco industry after the buyout and decided to reconvert their production to crops that did not involve farm-labor. On their part, the growers that did remain inside the NCGA continued their practices of labor exploitation, in an attempt to avoid the multiple economic responsibilities introduced by the CBA.

The CBA required the growers to comply with several major rules; the CBA established that the growers must pay compensation for job-related injuries and illnesses; and must reimburse the cost of transportation to and from Mexico. For the growers, this meant spending not only 496 dollars for each worker to the NCGA (Oxfam 2004, 11), but also laying out equivalent funds to cover the workers' trip and visa to the United States, on top of hiring union workers who would be educated to defend their rights. At the same time, the labor contract implemented recruitment standards, and gave the right to preferential employment to union workers with seniority. Under the provisions of the CBA, union workers who had completed a satisfactory season in North Carolina had to be given preference over non-union workers in the recruitment order. This rule was meant to protect the achievements of the CBA and give workers another reason to be part of the union. In North Carolina, a state known to be the least unionized state in the US, growers "simply [weren't] willing to abide an organized work force", argued Larry Wooten, president of the NC Farm Bureau (quoted in Fitzsimon 2006). "This is a right-to-work state, and people shouldn't be forced to hire union labor", he continued in an interview with Chris Fitzsimon.

The NCGA president reported that the growers complained not only about the additional costs of labor, but also about the fact that union membership "makes workers less motivated, prompting complaints from farmers" (quoted in Fitzsimon 2006). The President of a labor supply business in Lovingston said that some union organizers gave workers the impression that "if they want to sit on their bucket, they're still going to make 8.24 dollars an hour" (quoted in Fitzsimon 2006). Billy Carter, a Moore County farmer who obtains workers through the association, reportedly heard complaints about union workers from other farmers, "and many are adamant that they don't get as much work out of their employees as they

used to. Carter said he's not sure whether the workers have changed, or if anti-union sentiment has colored farmers' views" (Fitzsimon 2006).

Throughout 2005 and 2006, the growers looked for ways around the labor agreement. In many cases, the growers did not leave the association, but refused to comply with the regulations introduced by the labor contract. These growers did not give any reimbursement for the workers' visa or trip expenses, and while the recruitment agency continued to overcharge the workers in Mexico, in North Carolina the growers looked for ways to hire non-union workers in spite of the availability of union members. The 2005 and 2006 grievances report that these abuses occurred repeatedly. In several cases, they involved NCGA's recruiting agency in Mexico. The NCGA argued that "MOA is not part of the CBA", and therefore "it should not be involved with the issues that we have presented" (Griev. 1, 2006). However, FLOC insisted that under contract law, a principal is contractually obligated and responsible for the acts of its agent, and in this case the NCGA was responsible for the actions of its recruiting agency.

> Under contract law, a principal (NCGA) is contractually obligated and responsible for the acts of its agent (MOA) where that agent was acting within the scope of its apparent authority under the contract, or where the agent is acting with the knowledge of the principal. In addition, the principal (NCGA) is contractually obligated to instruct its agent (MOA) to comply with the terms of the contract (CBA) to which the principal has agreed. All this means that the CBA requires the NCGA to remedy acts or omissions of the MOA that are in violation of the CBA that the NCGA either directs or becomes aware of where MOA engages in those acts or omissions either at the direction of NCGA or with the apparent authority provided by the NCGA to recruit on its behalf. In Article II, Paragraph 1, the term "Association" is defined to include "agents" of the NCGA. MOA is an agent of the NCGA. (Griev. 1, 2006)

5.3 Violations of Recruitment Standards

In those years, there were a number of recruitment violations in Mexico. The most recurrent violations include workers who were asked to pay for their trip to the United States and their visa, but were never hired despite the payment of such fees, and never given their money and documents. According to Cano and Najar, each recruiter receives a commission of 40 dollars for each recruited worker. Each North Carolina farmer pays a 500 dollars fee to the NCGA for each hired worker (Cano, Najar 2004). And in Mexico, each worker pays a similar provision. The workers must pay in advance for the round trip cost of transportation from Mexico to the United States (500 dollars for a 40-hour bus trip from Monterrey to the

NCGA headquarters in Vas) (Cano, Najar 2004). They must pay about 100 dollars for their visa; 100 dollars for their interview at the US consulate and another 100 dollars for the recruitment agency that sends them their visa. This amounts to at least 4,000 pesos on top of the trip, a sum that the farm-workers must pay in advance to the *contratista*.

Since the contractors are legal figures that work at the bounds of illegality, often times they overcharge the workers, and other times they charge the workers and then disappear. In the state of Tlaxcala, a recruiter was charging between 8,000 and 20,000 pesos for recruitment when the fee for the 2005 season was 4,150 pesos. According to Daniela Bove, the person in charge of fraud at the American Consulate in Monterrey, there are recruiters who receive up to 3,000 dollars for a place on the list. "People are scared to speak with us, but I believe that there are many more frauds than those that we have detected", she said (quoted in Cano, Najar 2004). Another problem is that for the most part these recruiters have no office. "One of them had an office at a bus station for a while, but after some time she went away and we did not know where" (quoted in Cano, Najar 2004). Contractors often take the money from the workers and then disappear. The grievances report a wide variety of these practices. On one occasion, the:

> Workers have tried repeatedly over the course of the last couple of months to get [recruiter name] to return their money and their federal documents with no luck. As most workers took this money out on loan at 20 percent interest, it is very pressing that something be done to correct this situation. (Griev. 2, 2006)

FLOC requested that these workers be returned "the fees that they paid to MOA, the 4,152 pesos plus any amount of expenses that might have been accumulated in either interests, transportation, phone, and expenses in reapplying for their passport if it is not returned in a timely manner" (Griev. 2, 2006). The union also asked that those workers who had not been returned their passports or their money should have their passports and money returned within two weeks (Griev. 2, 2006). In one grievance dated April 2006, one worker was initially scheduled to cross the border on April 25. He turned his passport in to MOA on April 12, but was not informed that his crossing date had been cancelled. The worker asked for his passport and money to be returned to him but without success. Most of the time, MOA responded that the workers who did not receive their passports and fees back had in fact been contacted by the recruiter, but never came to pick up the items (Griev. 1-13, 2006). In some cases, individual recruiters were officially accused of fraud. FLOC repeatedly required that the recruitment agency break off its relationship with particular recruiters.

> We reiterate our concern regarding possible MOA continuation of employment or collaboration with [recruiter name]. She is in bad standing with the US consulate and has been barred from the H-2A program for overcharging workers and is under investigation by numerous government agencies in Hidalgo for committing fraud. (Griev. 16, 2005)

In the same grievance, FLOC argued that:

> [Recruiter's name] is not in good standing with the US consulate, for she has been banned for life from processing visas by the US consulate because of her history of fraud and overcharging of workers. We strongly request that she be removed from the recruitment process, as in the end she is a liability for the NCGA, FLOC and MOA.

The same problem occurred with another recruiter, who also overcharged the workers. In general, the recruitment system for "guest-workers" has traditionally been an opportunity for corruption. After the agreement, many FLOC members reported problems of field agents charging them hundreds (and sometimes thousands) of dollars just to be recruited, as well as "fees" for processing or transportation. In the few short weeks that Santiago worked in the Monterrey office in 2007, he filed about 200 complaints from H-2A workers having problems in recruitment. FLOC reported that the enforcement of recruitment standards over the two years following the agreement saved FLOC workers around four million dollars. In fact, the CBA agreements reduced the opportunity for extortion, fraud and bribes. In this sense, the CBA agreement strongly contributed to challenging the power exercised over farm-workers on both sides of the border. It is in this process of transformation that Santiago Rafael Cruz was brutally tortured and murdered in the union office in Monterrey on April 9, 2007.

5.4 Torture Protects Peace in the Labor Market

In 2004, the *Collective Bargain Agreement* allowed the union to enforce recruitment standards, including asking all MOA recruiters to provide receipts for the fees paid by workers and to give the workers who complete the season a reimbursement for their travel expenses. In order to make sure that these agreements were respected, on March 17, 2005, FLOC inaugurated a new office in Monterrey. The main purpose of the FLOC presence in Monterrey was to inform Mexican H-2A workers of their rights under the CBA, make sure that their rights are respected during the recruitment process, and that they are hired in accordance to the seniority system specified in the labor agreement. Since Mexican law forbids any foreign union from opening an office in the country, FLOC defined its office in Mexico as a "civil

association", an association in which the purpose was not to "unionize" the workers, but to offer advice, help solve conflicts regarding the recruitment process and educate the workers about their situation. In this sense, the union tried to meet the workers before their departure, in order to make sure they were aware of their rights and basic labor protections. When the new office was inaugurated in Monterrey, the business community in Mexico launched a national campaign against the union. In March and April 2005, the national newspaper *El Norte* published a number of articles explaining why the most important private conglomerates in Mexico were so strongly opposed to the union's presence in Mexico. In April 2005, the president of the Maquiladora Industry, the National Chambers of Commerce (Cámara Nacional de Comercio, or CANACO), the Chamber of Industry of Transformation (Cámara de la Industria de Transformación de Nuevo León, or CAINTRA), and the National Employers' Confederation of the Mexican Republic (Confederación Patronal de la República Mexicana, or COPARMEX), were reportedly accusing FLOC of destroying the "harmony of labor" in Mexico. On April 1, 2005, COPARMEX president Jesús Garza Cantu explained to reporter Ortega that the FLOC purpose in Mexico was to:

> Destabilize the business sector. We are asking entrepreneurs to not be caught by surprise by these people, who claim that they are here to help the workers and the firms, but they only intend to undermine them. (Ortega 2005a)

That same day, the president of the Labor Commission in COPARMEX Nacional, Tomas Natividad Sánchez, argued that "in all Northern Mexico there is an organization working against the *maquiladoras*, which is represented and financed by American unions and is against the creation of *maquiladoras* in the country" (Ortega 2005a). Gregorio Ramírez, president of the Asociación de Maquiladoras de Nuevo León, went on to say that such a presence was a matter of concern for the business sector: "We are concerned because foreign unions are infiltrating the country" (Ortega 2005a). Guillermo Dillon, director of CAINTRA Nuevo León, and president of CANACO de Monterrey Jesús Marcos Giacomán, demanded that the authorities control FLOC activity in Monterrey, and "ensure that they do not influence [the Mexican unions], or bring ideologies that are not compatible with them" (Ortega 2005a). A few days later, the most important business conglomerates of the country again accused FLOC of destroying the "harmony of labor" in Mexico. On April 6, *El Norte* reported that representatives from the Consejo de Relaciones Laborales del Estado, and the Asociación de Maquiladoras and COPARMEX had agreed to investigate FLOC activity in Mexico (Ortega 2005b). "[We will] solicit the American Consulate in Monterrey to provide us with information about the union". Jesús Garza declared that COPARMEX had asked the state

government in Nuevo León to help them "prevent the union from destabilizing the harmony of labor in the country". "We are going to be united", said Garza, "work with the American Consulate and obtain information about the union". The idea was to create a "common front" against the presence of FLOC in Mexico. Isaías Vasquez Mendoza, Subsecretario de Conflictos Obreros de la CROC, and Víctor Joaquín Rodríguez, leader of La Federación de Trabajadores de Sindicatos Autónomos, argued that "we want to prevent any action that would damage the relationship between our entrepreneurs and their workers" (Ortega 2005b).

In early April, there were only two FLOC organizers in Monterrey: B. and "Alejandro". B. was the young American director of the new office and Alejandro was a Mexican worker who had been particularly active during the campaign in North Carolina the previous year. At that time, their activity in Mexico largely consisted of two main tasks. First, they supervised the recruitment process and ensured respect for the seniority scale, which mandated that union members and those workers who had successfully completed the season during the previous year be given preferred status in the hiring system. Second, they educated the workers leaving for the United States about their rights under the CBA. Every day, B. and Alejandro met hundreds of workers in front of the American consulate in Monterrey, just before they were interviewed to receive their visa, in order to share information about their rights as well as the union and its contact information in North Carolina. On top of this daily activity, FLOC organizers held weekend councils at workers' hometowns. Each week, the two FLOC organizers in Monterrey travelled across Mexico to reach the poorest states of the country – namely those states from which most workers came, and in old-fashioned union style they held a public "junta" at the *zocalo*, addressing around one hundred workers each time to inform them about their working rights in North Carolina.

By the middle of April 2005, FLOC had already held public *juntas* in Durango, Durango, Nayarit Tepic, Tamazunchale San Luis Potosi, Ciudad Victoria Tamaulipas, and it was planning to hold juntas in Zacatecas, Zacatecas, and some places in Guanajuato. Each *junta* was extremely well attended: thanks to the support of the workers who called the local radio station and took responsibility for spreading the word, one hundred to one hundred and fifty workers came out every time. The following winter, all FLOC organizers went to Mexico from November to February to visit these communities and inform the workers about the situation in the United States. As FLOC organiser B. said in an interview:

> If you have one organizer per state then you have time to visit almost every home and every *ejido*, and this makes a big impact when the workers come prepared to North Carolina.

Figure 19-20. FLOC meeting in front of the US Consulate, Mexico. *Junta de FLOC frente al Consulado estadounidense, México*

From the start, the *juntas* had a significant impact on the workers. This tireless educational activity provided the workers with the tools to protect themselves throughout the process of migration and to question the legitimacy of their treatment under the H-2A program. As B. argued:

> If all workers in the H-2A program are organized, then the very organization of the guest-worker programs is undermined. […] After NAFTA and with all of the powers that are investing in Mexico and recruiting workers from Mexico, this organized resistance is a big problem. That's why they are opposing us so strongly: because we are showing that despite their expectations the workers are ready to defend their rights.

The potential of the FLOC activity caught the attention of the business community, and in early April not only was the formal recognition of FLOC as an "organization civil" delayed, and was the approval of B.'s working visa in Mexico, but on April 17, 2005, on the occasion of their visit to Nayarit, Tepic, the two FLOC organizers were detained. The charges alleged that FLOC had asked three workers to pay the union for their working visas. FLOC hoped that the complaints against the organizers would be withdrawn without any further processing, but two weeks after the event the authorities had not provided the union with a copy of the charges against them, a failure which suggested that the incident could be converted into a penal case. On the day of B.'s detention, I flew into Mexico. I had planned to meet FLOC organizer B. at home after he returned from Santiago de Nayarit. When B. arrived that evening he was overwhelmed by tension. He explained to me that the situation in Mexico was not easy.

> There's been a lot of reaction to our activity here from the beginning. The president of the *Maquiladora* industry and the Chamber of Commerce, the most powerful business conglomerates of the country, have been attacking us during the past week for destroying the "harmony of labor" in Nuevo León. Working in two countries, both in the US and here in Mexico, is a big step. Farm-workers are one of the most oppressed groups in the US and if they are aware of their rights in both countries that really challenges the H-2A program, the free market, and NAFTA, because of all these policies depend on the exploitation of farm-workers. That is why they want to stop us.

B. was under a great deal of pressure. At that point, he was still waiting for FLOC to be formally accepted as an "organization civil" in the country; he was still waiting to have his visa approved; and he was potentially going to undergo a trial and still be in a foreign country while the rest of the union was abroad. His working schedule began at 4 am every day, and it continued until late at night. Every weekend he was travelling, and every

day his name was in the national press, described as a danger for "peace" in Monterrey. The days were tense, and B. was very tired. My work with him was equally difficult. My field notes from those days recount this:

> Not a day goes by without the police stopping either me, or B., or both. I am always working with B. Whenever I can, I pull out my little tape recorder and interview the workers. But even when I am only speaking with them, the police come and stop me. There are police everywhere: outside the office; at the American consulate, at the bus station, and outside the house of hospitality. Right in the middle of the corporate campaign against the union, this intimidation is overwhelming. It is difficult to interview the workers. It is a difficult situation and we are all tired and concerned.

As will be detailed in the methodological notes in the appendix, the pervasive experience of social control was at times underscored by my legal status as an international student with a temporary visa in the United States. This led me to think more closely about the role of the researcher in the field and to reflect upon the challenges of doing research in violent or politically charged settings, a topic that would gain international importance in the following years.

In general, the campaign against the union was not unexpected. Although at the time it was written Mexican labor law was the most progressive law in the world, when Article 123 of the 1917 Constitution found expression in the national legislation of 1931 in the form of the *Ley Federal de Trabajo* or Federal Labor Law (LFT), the LFT was made up of representatives from the government. Since then, the state has always kept a strict control over labor unions, requiring that they have periodical legal registration and a right to negotiate collective bargaining that is formally recognized by the Secretary of Labor. In this context, Mexican unions have always been controlled by the state. The FAT (the Authentic Workers Front or Frente Auténtico del Trabajo) is the only independent confederation of unions in the country. Throughout the years, FAT openly condemned NAFTA and later the Trans-Pacific Partnership and made "labor dumping" a key issue in its activity (Penman-Lomeli 2016). In general, FAT often denounced the situation of intimidation surrounding independent unions in Mexico (Hathaway 2000). In 2009, a report by Amnesty International emphasized that human rights defenders in Mexico were often the favored target of disappearances, beatings or threats (Amnesty International 2010). All too often, states the report, human rights defenders have been met

> with hostility and attacks. They have faced threats, harassment and intimidation, spurious criminal charges and wrongful prosecution. Some activists have been killed in relation to their human rights work. Threats,

> attacks and killings of human rights defenders are rarely investigated effectively by either federal or state authorities. The seriousness of attacks on human rights defenders in Mexico in the last few years calls for urgent action by federal, state and municipal authorities. [...]. The criminal justice system is often misused by both state and federal authorities to harass human rights defenders and to target those who have taken part in public actions or protests. With or without arrest warrants, the detention of human rights defenders can amount to arbitrary arrest or detention if it is carried out with the intention of stopping or impeding their work.

When FLOC moved to Mexico, the campaign showed the intention to stop the "intrusion" of yet another liberal North American union in the country. Despite its moderate forces, FLOC's activity challenged the exploitation of migrants across the border. As a result, the union has had to battle against anti-union hostility and frequent attacks in both the US and Mexico. The office in Monterrey was burgled and broken into several times. There have been a number of other attempted break-ins, threats, arrests and intimidations. The tension in Mexico reached its climax when FLOC organizer Santiago was bound, gagged and beaten to death in the Monterrey office. The organizers who found him said that he had been tortured. The crime came at a point in the campaign in which FLOC's enforcement of recruitment standards had saved FLOC workers around two million dollars a year. As was made clear in the *New York Times*, in 2006 the United States issued about 37,100 temporary visas for agricultural workers and Mexico accounted for 92 percent of them (Malkin 2007). In 2005, a lawsuit led to a settlement between the union and the growers' association that dropped all of the workers' recruiting fees for two years (Malkin 2007). The recruiters' charges and the costs of the visas was now paid for by the growers rather than by the workers. In this context, the union insisted that Santiago's murder should be interpreted as an act of retaliation against the union's efforts to contrast the interference of criminal syndicates in the guest-worker recruiting system. According to the Congressional Records, FLOC President Baldemar Velásquez repeatedly maintained that Santiago's murder should be understood as being related directly to

> FLOC's efforts to organize workers in the Monterrey area. He said the union's education efforts made workers were less susceptible to people who would charge workers large sums of money to enter the United States illegally. [...] "We are actually fighting the corruption that's prevalent in this area". Mr. Velásquez said via telephone from Monterrey "There's been 10 policemen killed here in the last year. We've educated the workers to not be taken advantage of and some people here don't like that, but we have to carry on the work". (Congressional Record 2007, 9039)

5.5 Union? Mexico!

In North Carolina, the *Collective Bargain Agreement* had an equally important backlash. In this case, dispute over the recruitment process involved workers who were jumped in the seniority order in violation of the CBA and often in an attempt to hire only those workers who were not affiliated with the union. FLOC complained about a trend whereby workers who had filed grievances during the 2004 or 2005 season were not rehired the following year, in what appeared to be a perpetuation of the blacklist system even after its legal abolition. At the same time, the union reported that many union workers were being classified as new workers and thereby denied the right to preferential status in the recruitment order despite their union membership. For the union, this disregarding of the recruitment order was a major problem. FLOC asked its members to pay 2.5 percent of their salaries in union fees. In return for membership the union granted them an advantage over non-union workers during the recruitment process. In point of fact, this rule was violated a number of times. The grievances show that the growers often discriminated against union members in the two seasons that followed the establishment of the CBA. In one grievance, 1,531 preferred union workers were defined as ineligible. This means that these workers were hired only after new, non-union workers had been hired, resulting in a major violation of the labor contract (Griev. 19, 2005). In this case, FLOC requested that the workers be changed from new or ineligible to either "active" or "preferred" workers, depending on their real status. A few days later, the union liaison for the NCGA provided an updated status list, in which he recognized that many union workers had been "mistakenly" categorized as non-union workers without seniority, and he pointed out that:

> You insinuate in this grievance that we gave these workers a code of N to somehow deny them their spot in the recruiting order. It is detrimental to make insinuations like this with no evidence to back them up. […] Please exclude baseless accusations such as this from your grievances in the future.

This issue became a matter of dispute in several grievances. In 2005 and 2006, union workers were often classified as "new", while new non-union member workers were given preferred status. An internal document dated March 2006 reported that the NCGA had its own "preferred workers which practically all are non-union". Although NCGA denied this grievance, during the season there were hundreds of cases of individual workers who were not called back to work despite (or due to) their union membership. On one occasion, 330 union workers who had completed a satisfactory season during the previous year did not appear in the

NCGA seniority list for 2005. The NCGA hired non-union workers instead. According to the union grievances, in March 2006, while driving four workers to their sites of employment, one NCGA representative reportedly asked the four workers he was driving: *"¿por qué no renuncian [al sindicato]? Tienen los mismos beneficios* [why don't you resign from the union? You will have the same benefits]". In this particular case, the NCGA denied the claims and argued that the grower had:

> Denied making said statements to said workers on said date on the way to said grower's farm. Our members have been instructed to inform workers that they have the right to resign from FLOC if they joined last year because they thought it was necessary in order to return to work in 2006. (Griev. 31, 2005)

In a similar fashion, on March 8, 2006, ten workers faxed resignations to FLOC. The grievance reported that these workers had justified their request by saying that: "*tenemos que renunciar* [we have to resign]" (Griev. 21, 2006). Another grievance reported that:

> FLOC received six resignations from workers at [grower's name], and on the same date received twelve resignations from workers at [grower's name]'s camp. Though the six workers at these camps are separately employed, sixteen of the eighteen resignations are overwhelmingly identical (of the approximately first 150 words of the resignations of [worker's name] and [worker's name], one to two words are different). This makes us believe that workers are receiving a script on what to write in order to resign. […] There have been countless confrontations in 2005 and now in 2006 regarding this issue. Including the date in which the above workers received their orientation at Vass. (Griev. 51, 2006)

The NCGA response was that:

> NCGA is not responsible for a scripted resignation if this is indeed occurring. We have simply informed the workers of the reason they have the right to resign. The fact that many of them signed up for the same reasons could be contributing to the homogeneity of their resignations. In addition, we suspect that workers with limited educational backgrounds may be deferring to those workers who have the ability to communicate effectively in writing. As I stated in my response to the last grievance, FLOC is welcome to speak with the workers who are resigning. If the workers are in any way confused about their freedom to make a choice in this matter, we are happy to accept written notice that they wish to rejoin the union and would like the dues deducted

> from their weekly pay. Until we receive such correspondence, we will instruct our growers not to make dues deductions.

In May, another grievance reported that one grower asked one worker if he was “with the union”.

> When [worker’s name] responded that, yes, he is “with the union”, [grower’s name] responded by shouting, “Mexico!”, as in either resign from the union or face termination or not being asked back the following year, based on his union affiliation. [grower’s name] also stated that he would explore manners by which to hire workers who were not union members, because only workers affiliated with the union arrived at his camp, and to only request as preferred workers those that are not union members, for future harvest seasons.

NCGA responded that:

> I have a statement from the workers that is completely different from your rendition of the events. I tried to scan it in but it was hand written so I will need to fax it to you. Please send me a fax number where you want it sent. I believe that you “baited” this grower until you extracted a negative comment. I do not consider your efforts at this farm to be in harmony with our agreement and believe this incident was orchestrated by you. We have never in ten years had a problem on this farm.

A few days later, another grievance reported that two NCGA representatives encouraged workers to resign from FLOC, emphasizing that the union “misinformed, intimidated, and coerced workers into signing [union membership] in 2005” (Griev. 71, 2005). According to the grievance, the NCGA representatives also stated that if they “do not want to support the union quota they can resign”. Similarly, this other complaint stated that:

> A field rep. for NCGA got in front of the workers in the course of the orientation session at the [location name] shed, and basically told them that they should resign because they were tricked into signing union membership and wage deduction authorizations irrevocable for a year. When the FLOC representative who was present tried to discuss the manner in which it [the signing of cards] was handled with the workers, he was verbally heckled and interrupted by another NCGA field rep in what I understand was a manner which was calculated to prevent or frustrate any effective communication with the workers. (Griev. 75, 2006)

The dispute over the “Interference with Workers’ Union Membership”, and “Disparagement and Subversion of Union”, lasted for two years. These

actions represented attempts to exclude union workers from the recruitment process, allow growers to ignore the economic requirements introduced by the CBA, and to minimize the influence of the union and the CBA in North Carolina agriculture. In fact, in 2006 the NCGA claimed that it would not comply with the need to hire union workers introduced by the CBA, because the "Union Preference" provision was a violation of the North Carolina "Right to Work" laws. Right-to-work laws have been enforced in 28 US states as of 2017 and are allowed under provisions of the *Taft-Hartley Act*, which prohibits trade unions from making membership or payment of dues a condition of employment. This statute theoretically implies that the growers should not be forced to hire union workers. In fact, on the basis of this statute the Farm Bureau passed a resolution opposing unionization, while several other groups started to recruit legal, H-2A non-union workers for North Carolina farmers. Among these groups is the Mid-Atlantic Solutions Company, which began to provide non-union H-2A workers to North Carolina farmers in competition with the NCGA. This led farmers to drop out of the NCGA and move from one agency to the other. According to the Mid-Atlantic Solutions president:

> Workers who come in under the federal migrant labor program are protected by federal law, get free transportation and live in state-inspected housing, and don't need [union] representation. The workers who really need help are illegal immigrants who have no such protection. (quoted in Fitzsimon 2006)

With this philosophy, the Mid Atlantic president not only reiterated the belief that the H-2A program "protects" workers, but suggested that a union is not necessary (or welcome) in North Carolina. The Right to Work campaign in North Carolina became very popular very quickly. Already in 2006, the NCGA was down to about 500 farmers "and will bring in only about 5,000 workers", said President Eury. Eury "said that if membership dips below 350 farmers, the association probably will shut down" (Fitzsimon 2006). At that time, the growers started using the right to work as a reason to deny the validity of the CBA. NCGA farmers abandoned the association in large numbers and began to rely on the services of other groups that offered "legal, H-2A non-union workers". Within the two seasons following the agreement, 500 farmers dropped out of the association. The agency Mas Labor H-2A alone recruited more than 20 former NCGA growers, for a total of about one thousand jobs. At that point, the union had limited bargaining power – not only were hundreds of FLOC members losing their jobs because of grower dropouts rather than retaining preferential status, but the union was losing its leverage over the workers, as there was theoretically no reason for them to pay union fees if these could not guarantee that the worker would be rehired. As the situation degenerated, the issue became part of a larger

dispute: a class action lawsuit against the NCGA and its original 1,000 members, also known as the *García-Alvarez* case. In December 2002, more than 15,000 temporary agricultural workers with visas under the H-2A program filed a class action lawsuit against the NCGA and all of its approximately 1,000 grower members. The basis for that lawsuit was that both the *Federal Minimum Wage* law and the *North Carolina Wage and Hour Act* required the NCGA and its grower members to pay for all visa and transportation expenses for those 15,000 and more workers to travel to NC to work (Griev. 76, 2006). With a decision filed on September 30, 2004 in *De Luna v. NCGA*, the federal court agreed that the NCGA and its members had violated the federal minimum wage law by failing to pay for those expenses and effectively transferred the plaintiffs' state law claims for more than 12 million dollars to state court. In the subsequent litigation, known as the *García-Alvarez* case, those same 15,000 and more workers used the legal precedent from the *De Luna* case and the potentially disastrous liability of more than 12 million dollars to pressure the NCGA and its members into a settlement of the claims of all of those workers (Griev. 76, 2006). The settlement required payment of approximately 1.475 million dollars to those workers in addition to major changes in the collective bargaining agreement between FLOC, AFL-CIO, and the NCGA and its growers in 2006 and 2007. Those changes led to the establishment of a seniority system for H-2A workers that gives absolute preference to FLOC members; it required that the NCGA and its grower members pay the US government directly for all visa fees for any H-2A worker who comes to NC to work for the NCGA; and it required that the NCGA reimburse all H-2A workers for their transportation expenses to NC from their home villages in Mexico at the end of each worker's first working week in NC (Griev. 76, 2006).

As a result, in October 2006 FLOC obtained the right to "super-seniority" preference for those FLOC members who had lost their jobs (Griev. 76, 2006). Under this provision, FLOC could demand that those workers who used to be employed by rule-breaking growers be given "super"-preferential status over everyone else during the recruitment process. However, although the litigation mandated that all NCGA members who were members of the association between 2001 and 2006 had to comply with the CBA regulations, most of the growers who had left the association reportedly failed to comply with the contract and to pay the necessary recruiting, transportation, visa and visa interview fees. In this context, FLOC tried unsuccessfully to prove that a few growers were violating these regulations. Without an affidavit, argued the FLOC lawyer, NCGA growers have no incentive to comply with these demands. In fact,

> It will be extremely difficult if not impossible to convince the judge to enforce his October 3rd, 2006 order requiring payment of recruiting fees, transportation visa fees, and visa interview fees by the grower,

> and not the worker. If that enforcement does not occur against each group of growers listed above and below who are not complying with that part of the judge's order, there is no incentive for NCGA growers to stick with the NCGA CBA which requires them to pay all of those costs when they can go non-union and avoid paying them with impunity. (Griev. 75, 2006)

Now that the growers could legally hire non-union workers, the achievements of the CBA were potentially compromised. In fact, the "Right to Work" campaign undermined the rights that workers had obtained throughout their boycott campaign: the right to respect recruitment standards, wage, health, and safety regulations, and the right to reimbursement and seniority. The growers could overlook all the regulations that the contract had enforced and return to traditional exploitative practices. In this situation, the only option for FLOC was to begin a new boycott campaign in North Carolina, and organize those non-union H-2A workers who were hired by "runaway growers," or on farms that had never been part of the NCGA. The purpose of the new campaign was to ensure that all farmers respect the conditions mandated in the labor agreement whether or not they were part of the association. The idea behind it was the same that led FLOC to begin its activity in North Carolina in 1997; when FLOC signed a labor contract with Campbell Soup and its growers in 1987, after eight years of strikes against the tomato and pickle operations of Campbell Soup in Ohio and Michigan, in short order the union had to protect its success by signing new contracts with Vlasic, Heinz, Green Bay and Aunt Jane Corporation and their pickle growers in Ohio and Michigan. Without an expansion of the labor contract, there was no incentive for these companies to buy tomatoes or cucumbers from union growers; they could simply move their operations to other states where the costs of crops were cheaper. After signing labor contracts with these companies, FLOC was then forced to expand its operations to North Carolina in order to prevent these pickle producers from buying cucumbers from non-union growers in North Carolina at the expense of union growers in Ohio. As Velásquez said, organizing North Carolina was not merely an option, but a necessary:

> Second step in a broader campaign that we see stretching down into Guanajuato and Michoacán, Mexico. The same companies buy cucumbers there. They use the same structure this contracting, subcontracting style, but this multi-party collective bargaining arrangement is a vehicle to offset the way they would play us off against each other and the way they would keep us from truly creating some change for workers. (Velásquez 1998, 26)

Similarly, FLOC's new campaign intends to prevent non-union growers from having an edge in the market over union growers. Since the global economy pressures farmers and corporate powers to outsource production wherever the cost of labor is cheaper, any time FLOC is successful in its campaigns it implicitly increases the costs of labor and pushes capital to outsource production elsewhere. In this context, the union is forced to organize the workers wherever these corporations externalize their production, countering the downwards pressure on prices and wages with an upwards pressure for social reforms in agriculture (Velásquez 1998, 25).