

Letting An Outsider Solve Problems

More often, families and businesses are turning to mediation to help settle differences.

BY DES KELLER

The news three years ago wasn't good for part-time Illinois farmers Vince Moreth and Pete Libbra. Their local Farm Service Agency representative visited a 70-acre parcel they farmed in partnership near Springfield.

The land is considered highly erodible, and measurements by the FSA worker revealed that the parcel, planted to soybeans, had nowhere near the 70% residue coverage a conservation plan required.

The next thing Moreth and Libbra

knew, the FSA had ruled them out of compliance on the field. That meant they would lose more than \$10,000 in government payments on all the land they farmed together.

"It was pretty obvious we didn't do it in bad faith," says Libbra, who notes that their gross income from soybeans on the field was less than the lost government payments.

In a hearing, Libbra explained to the FSA's county board that he and Moreth thought they were allowed to do a light disking and then use a no-till planter for soybeans. FSA regulations, after all, allow officials to withhold punishment when a producer's efforts are in good faith.

No such luck. The county board ruled against the partners.

At that point, the producers made a decision that is becoming increasingly popular to settle disputes. They turned to mediation, rather than continuing the appeal process or consid-



PHOTO: CHRISTINE MCCLINTIC

Farmers Vince Moreth and Pete Libbra turned to mediation when the FSA ruled them out of compliance on a 70-acre field

ering taking the matter to court.

Under a program affiliated with Southern Illinois University, a third party was brought in to hear both sides of the story.

The mediator had no power to make a ruling, but she was able to make a fact-finding summary. She indicated it was quite likely that Moreth and Libbra might qualify for a "good-faith exemption" and asked the county board to review its earlier decision.

Not surprisingly, the result was that the two farmers didn't lose their government payments after all.

They each have different takes on the process. "Overall, it was a very fair procedure," says Moreth, himself a lawyer. **SOUNDING BOARD.** "It was a waste of everybody's time," says Libbra, a full-time contractor. He believes the case never should have gone to mediation, that it was obvious he and Moreth made a "good-faith" mistake.

Nonetheless, the problem was taken care of without going to court or having to conduct FSA hearings at the state level.

"I like the mediation because it does offer an independent third party as a sounding board," says Ray Watson, a Springfield attorney who represented Libbra and Moreth.

"I tend to think the agency people probably benefited from a third party hearing our side of the story," Watson says. "When you are dealing with agencies, the policeman is the judge. It's difficult to expect a fair and impartial decision in that circumstance."

The Southern Illinois University program is used only to handle disputes involving USDA. Mediators have dealt with 23 cases of this type in the state during the past two years.

But mediation is also being used to help settle disputes among family members or between neighbors.

The 14-year-old Iowa Mediation Program handles between 700 and 1,000 cases annually. These days, most of the disputes there involve hog-facility odors, contract-feeding disputes or hedge-to-arrive contracts.

The focus of the Iowa program, unlike the one in Illinois, is to reach a de-

cision with the help of a mediator. The program costs \$50 per hour for farmers involved in credit cases and \$100 per hour for noncredit cases.

"We want to be clear," says program director Thompson. "If they reach a decision, it can be as binding as any other contract because the two sides reached it together and put it down on paper."

Less formal are mediations that occur between family members, particularly in estate-planning situations.

"I do a lot more of facilitating discussions," says Lance Woodbury. "I seldom do a hard-core mediation." Woodbury is a conflict analysis and resolution specialist based in Leoti, Kan., with the accounting firm of Kennedy & Coe.

"What I try to do is get family members around the table to talk about the

future and what they'd like to see happen in the family business," he says. Often these discussions involve the family's accountant and attorney.

Having a mediator frees up the attorney or accountant to figuratively sit on the same side of the table with the family members, says Woodbury. "Having me there allows the lawyer and accountant to play the expert role and not the facilitator role."

GETTING HELP. If you're involved in some type of dispute, you can contact the Iowa Mediation Program at (515) 223-2318 to find out what resources or programs may be available in your state. There are 20 states that have agricultural mediation programs certified by the U.S. government. In addition, USDA has its own mediation program that works with disputes involving USDA. ■