U.S. Department of Labor Labor-Management Services Administration
Washington, D.C. 20216

Reply to the Attention of:

NOV 9 1983

Mr. Joseph Groff
Assistant U.S. Attorney
U.S. Department of Justice
P.O. Box 1588
Portland, Maine 04104

Dear Mr. Groff:

This is in reply to your request for an opinion regarding coverage of the Keyes-Fibre Federal Credit Union Pension Trust (the Trust) under title I of the Employee Retirement Income Security Act of 1974 (ERISA).

We have examined copies of the trust agreement between Keyes-Fibre Federal Credit Union (the Credit Union) and Jeanette G. Morin, George Rancourt, and Alexander Ferguson; the application dated January 12, 1982, by the Credit Union to participate in the CUNET Trust; the agreement dated September 28, 1975, between the Credit Union and a trustee of the Trust; and the Amendment to the Union Mutual Life Insurance Company Prototype Combined Defined Benefit (Fixed Benefit) Pension Plan dated July 12, 1979. Those documents indicate the Trust was established and/or maintained by the Credit Union for the benefit of its employees.

ERISA title I, section 4(a) specifies that ERISA title I applies to any employee benefit plan if it is established or maintained (1) by any employer engaged in commerce or in any industry or activity affecting commerce, or (2) by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce, or (3) by both, except for plans specifically exempt under section 4(b).

The term “employee benefit plan” is defined in ERISA title I, section 3(3) as “… an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan.” The term “employee welfare benefit plan” is defined in ERISA title I, section 3(1) as “… any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 302(c) of the Labor Management Relations Act, 1947 (other than pensions on retirement or death, and insurance to provide such pensions).”

The term “employee pension benefit plan” is defined in ERISA title I, section 3(2)(A) as “… any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program – (i) provides retirement income to employees, or (ii) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan."

The elements of coverage under title I of ERISA are:

(1) the plan must be established or maintained by an employer or employee organization, as those terms are defined, or by both;

(2) jurisdiction under the commerce clause;

(3) the plan provides benefits to participants and beneficiaries as defined;

(4) the plan provides benefits specified in the definition of "employee welfare benefit plan" or "employee pension benefit plan"; and

(5) the plan is not exempt under section 4(b).

The following is a discussion of each of these points with respect to the Trust.

1. Establishment or Maintenance by Employer and/or Employee Organization.

The Trust was established and/or maintained by an employer.

ERISA section 3(5) defines the term "employer" as "… any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity."

The Credit Union clearly meets this definition.

2. Commerce Clause.

With respect to the commerce clause, ERISA section 4(a) provides that ERISA title I applies to employee benefit plans established or maintained (1) by any employer engaged in commerce or in any industry or activity affecting commerce, or (2) by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce, or (3) by both, except for plans specifically exempt under section 4(b).

ERISA section 3(11) defines the term "commerce" as "… trade, traffic, commerce, transportation, or communication between any State and any place outside thereof." The term "industry or activity affecting commerce" is defined in ERISA section 3(12) as "… any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and includes any activity or industry affecting commerce within the meaning of the Labor Management Relations Act, 1947, or the Railway Labor Act."

The term "industry or activity affecting commerce" has been given a liberal interpretation by the courts. The Supreme Court has held that the jurisdiction of the National Labor Relations Board under the Labor Management Relations Act definition is as broad as the jurisdiction of Congress over interstate commerce. See NLRB v. Fainblatt, 306 U.S. 601, 607, and cases cited therein (1939). Therefore, court decisions under the Labor Management Relations Act are useful in determining the application of sections 3(11) and (12) of ERISA. In the case of NLRB v. Bank of America, 130 F. 2d 624 (9th Cir. 1942), cert. denied 318 U.S. 791 (1943), the court pointed out that such normal business activities as correspondence with other banks and business institutions, use of telegraph or telephone facilities involved the use of channels of interstate communications so that the bank was "engaged in interstate activities not describable otherwise than as commerce."

Therefore, the Credit Union is included within the commerce clause of title I of ERISA.

3. Provision of Benefits Specified in Law.

Under title I of ERISA, in order to be covered, a plan must provide benefits specified in the law's definition of "employee welfare benefit plan" or "employee pension benefit plan".

The definition of the term "employee pension benefit plan" is contained in section 3(2)(A) of ERISA which provides:

> (2)(A) Except as provided in subparagraph (B), the terms "employee pension benefit plan" and "pension plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program --
>
> (i) provides retirement income to employees, or
>
> (ii) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan.

According to the documents identified above, the Trust provides benefits described in section 3(2)(A) of title I of ERISA. The Trust is not a severance pay arrangement or a supplemental retirement income payment within the meaning of section 3(2)(B) of ERISA.

4. Provision of Benefits to Participants or Beneficiaries.

ERISA title I covers only <u>employee</u> benefit plans, i.e., plans arising out of the employment context. Thus, in order to be covered, a plan must cover participants who are employees and/or former employees (including members of employee organizations) who are or may become eligible to receive benefits or whose beneficiaries may be eligible to receive benefits.

ERISA section 3(6) defines the term "employee" as "… any individual employed by an employer."

ERISA section 3(7) defines the term "participant" as "… any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit."

ERISA section 3(8) defines a beneficiary as a person designated by a participant or by the terms of an employee benefit plan who is or may become entitled to a benefit thereunder.

The Trust provides benefits to employees (and their beneficiaries) of the Credit Union. Thus, the Trust provides benefits to participants and beneficiaries as defined in ERISA.

5. Not Exempt Under Section 4(b).

ERISA section 4(b) exempts certain employee benefit plans from coverage. The Trust does not fall under any of the section 4(b) exemptions.

Conclusion

Therefore, the Keyes-Fibre Federal Credit Union Pension Trust is covered by title I of ERISA.

Sincerely,

Morton Klevan
Deputy Administrator
Pension and Welfare Benefit Programs