

**[J-28-2019] [MO: Dougherty, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT**

ESTATE OF LYNN D. WILSON BY DONNA KILLINGER, EXECUTRIX,	:	No. 21 WAP 2018
	:	
Appellee	:	Appeal from the Order of the Commonwealth Court entered December 20, 2017 at No. 1253 CD 2016, reversing the order of the State Employees' Retirement Board entered June 28, 2016, at No. 2014-04.
v.	:	
	:	
STATE EMPLOYEES' RETIREMENT BOARD,	:	ARGUED: April 10, 2019
	:	
Appellant	:	

CONCURRING OPINION

JUSTICE TODD

DECIDED: NOVEMBER 20, 2019

Contrary to the learned majority, see Majority Opinion at 21, I am unconvinced that adoption of the mailbox rule would undermine, in any meaningful way, the ability of the State Employees' Retirement Board ("SERS") to manage and maintain the retirement fund it oversees.¹ Indeed, SERS appears to concede this. See SERS Brief at 23 ("Although the Board perhaps could have promulgated a regulation that provides that most documents are filed when mailed, and that it might even be possible to extend such a regulation to annuity payment option re-elections, the fact (and law) remains that the Retirement Board did not do so."). Moreover, I find the policy justifications offered by the majority for rejecting the viability of the mailbox rule herein to be unfounded and

¹ I assume that an option change form, provably placed in the United States mail by a SERS member just prior to his death, would arrive at SERS at most a week after his death. Thus, adopting the mailbox rule would only modestly alter the date upon which SERS' retirement calculations would be based.

unconvincing. See Majority Opinion at 21-23. Most notably, contrary to the majority's premise, it seems to me that no one has suggested that the mailbox rule would operate to accord legal significance to an option change form mailed *after* the retiree's death. See Majority Opinion at 22 (“[I]f a member’s intended beneficiaries discovered the completed Option Change Documents days, weeks, or even months after that member’s death, there is nothing to prevent the application of the Commonwealth Court’s reasoning (which asks only whether the member completed the forms and considers SERS’s date of receipt irrelevant) to allow those intended beneficiaries to bring or mail the documents to SERS, and require SERS to honor the change, contrary to controlling precedent and to the obvious detriment of the system.”); *id.* (criticizing allowing a “filing” to “occur upon mailing at any time before *or after* a member’s death” (emphasis added)). Nevertheless, I agree that the implicated regulation is not clearly erroneous, and thus is entitled to deference. See *Lancaster County v. Pennsylvania Labor Relations Board*, 124 A.3d 1269, 1286 (Pa. 2015). Accordingly, I concur in the result.