2016 IL App (2d) 160011-U
Nos. 2-16-0011 & 2-16-0012 Cons.
Order filed November 22, 2016

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE VILLAGE OF THOMSON, Petitioner-Appellant, v. THE ILLINOIS HUMAN RIGHTS COMMISSION; TERRY COSGROVE, PATRICIA BAKALIS YADGIR, and DUKE ALDEN, Commissioners; KEITH CAMBERS, Executive Director; THE ILLINOIS DEPARTMENT OF HUMAN RIGHTS; ROCCO CLAPS, Director; ANDREW SCHOTT; and ROBERT GROHARING, Respondents-Appellees.	Appeal from the Orders of the Illinois Human Rights Commission. Charge Nos. 2006CF1589 2006CF1590

JUSTICE SPENCE delivered the judgment of the court.
Justices Burke and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: We found no error in the Human Rights Commission's: (1) rulings that the Village of Thomson retaliated against Andrew Schott and Robert Groharing for their complaints of gender discrimination; (2) awards of compensation for back pay, plus interest; and (3) awards of attorney fees. Therefore, we affirmed.

¶ 2 The Illinois Department of Human Rights (DHR) filed complaints with the Human Rights Commission (Commission) on behalf of Andrew Schott and Robert Groharing alleging,

inter alia, that the Village of Thomson (Village) had failed to reappoint them as part-time police officers in retaliation for their complaints of gender discrimination. The Commission ruled in favor of the men on this allegation and awarded damages of back pay and attorney fees. In this consolidated appeal, the Village seeks direct review of the Commission's orders. The Village argues that the Commission erred in: (1) ruling that the Village had retaliated against Schott and Groharing for filing complaints alleging violations of the Illinois Human Rights Act (Act) (775 ILCS 5/1-101 *et seq.* (West 2004)); (2) awarding Schott $35,534 and Groharing $33,461.14 as compensation for back pay, plus interest; and (3) awarding $29,969.55 for Schott's attorney fees and $29,970 for Groharing's attorney fees. We affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Schott's and Groharing's Filings with the DHR

¶ 5 On October 31, 2005, Schott and Groharing separately filed charges of discrimination with the DHR. Schott alleged as follows. From March 1994 to July 1997, he was the chief of police for Lanark, Illinois. On March 30, 2001, he was hired as a patrolman with the Thomson Police Department (Department). In August 2003, Department Chief Larry Carroll told Schott that the expectations for another officer, Beth Evans-Balk (f/k/a Beth Evans) (Balk), were different because she was female. Schott told Carroll that he disagreed, and Carroll replied that the different treatment was sanctioned by Village President Merrie Jo Enloe (n/k/a Merrie Jo Enloe Pauley) (Pauley). Carroll subsequently told Schott on at least two other occasions that the job expectations were different for Balk and that he should treat her differently because she was female. Carroll further told officers not to go outside of the Department or the Village's police committee "in response to complaints made to Village Board Members" that Balk was being treated differently than male officers. One police committee member was Brian Balk (Brian),

who was a Village Board (Board) member and had since married Balk. On February 9, 2005, Schott submitted a letter of resignation effective March 1, 2005. The resignation was delayed by agreement between the Board and Schott, in order to settle disputes within the Department regarding Balk.

¶ 6 In spring 2005, Schott was approached by Randy Starr, a Village Board member and chairman of the police committee. Starr told Schott that he considered him to be the Department's best employee and requested his help in restructuring the Department. LuAnn Bruckner, another Board member, was present during the conversation and said that she had the same compliments regarding Schott's abilities within the Department.

¶ 7 On April 28, 2005, Schott complained to the Illinois Attorney General's office that Balk was receiving preferential treatment because she was female. On May 2, 2005, the Board adopted a recommendation by Starr that the Village dissolve the Department. Included within the motion before the Board was the statement that the Board would not reappoint anyone currently employed by the Department. Thus, Schott was discharged that day. At that time, Pauley and other Board members were aware that Schott and Groharing had filed complaints with the Attorney General. The Department's dissolution was pretextual and nothing more than a means to discriminate against Schott and Groharing on the basis of gender and in retaliation for prior complaints.

¶ 8 Following the Department's dissolution, the Carroll County Sheriff's Department provided police protection for the Village. The Board then reversed its decision and began accepting applications from discharged officers. Schott and Groharing submitted applications, but the Village never considered them for positions within the Department due to their complaints of Balk's preferential treatment, notwithstanding the men's past service and above

average performance evaluations. On June 6, 2005, the Board adopted a motion to rehire Balk as a full-time officer, with the same pay and benefits she had previously been receiving. Other part-time officers were also re-hired.

¶ 9 Groharing filed a complaint mirroring that of Schott. We summarize only the allegations that were different. Groharing was hired by the Village in 1991 as a part-time law enforcement officer. He was promoted to lieutenant in October 1996. During his tenure, Balk was one of the patrol officers that he supervised. On June 1, 2003, Carroll told officers that they were prohibited from approaching Board members and questioning them on any issue being handled by him or the police committee. After the fall of 2003, Groharing was off work due to injuries he sustained while employed by the Illinois Department of Corrections (DOC). He was released to return to work on May 13, 2004. At first the Village refused to reinstate him to his position, but it reinstated him after he retained an attorney and threatened to sue. Groharing signed a release of that claim on October 25, 2004, and he was paid his full back wages.

¶ 10 On February 4, 2005, Groharing wrote to Starr, as chair of the police committee, to ask for the Board's help in dealing with problems within the Department, including Balk's preferential treatment as a female. Groharing also sent a letter to the Illinois Attorney General's office regarding this issue on April 28, 2005. When the Board subsequently dissolved the Department, it was aware of Groharing's and Schott's complaints to the Attorney General's office. As with Schott, Groharing was discharged by the dissolution and then submitted an application for re-employment. However, the Village never considered him for a position, notwithstanding his past service, his above average performance evaluations, and his role as a lieutenant. The Village refused to consider him based on his complaints about Balk's

preferential treatment over that of male officers and his prior actions to protect his rights under the Act and the Americans with Disabilities Act (42 U.S.C. § 12101 *et seq.* (2000)).

¶ 11 B. The DHR's Complaints

¶ 12 On November 15, 2007, the DHR filed with the Commission complaints of civil rights violations on behalf of Schott and Groharing. The complaints alleged that the Village: (1) subjected the men to unequal employment terms and conditions due to their gender; (2) failed to rehire them because of their gender; (3) and failed to rehire them in retaliation for their opposition to unlawful discrimination. The Commission conducted a joint hearing on the complaints on various dates in May and July, 2010.

¶ 13 C. Administrative Law Judge's Ruling

¶ 14 The administrative law judge (ALJ) issued recommended liability determinations for each case on January 31, 2013. In its briefs, the Village states that it is adopting the 81 statements of fact that the ALJ found,[1] as they are considered *prima facie* true and correct (see 735 ILCS 5/3-110 (West 2012)), without conceding the ALJ's conclusions. Therefore, we summarize the ALJ's factual findings, beginning with the findings in Schott's case.

¶ 15 Pauley had been a resident of Thomson since 1955 and a Board member from 1979 to 1981. She was elected Board president in 1981 and served until 2006. In that position, she was familiar with the terms and conditions of employment for Village employees and had authority to hire and fire police officers. For example, she had authority to terminate police officers who were not meeting expectations or were disruptive. The Board met about every two weeks. The Board and its president were elected by popular vote. In 2005, it consisted of four men and two women.

[1] The ALJ listed 76 factual findings in Schott's case and 81 in Groharing's case.

¶ 16 Pauley also served on a part-time basis as mayor, receiving an annual income of $1,700 for that work. Others acted as mayor *pro tem* when Pauley was gone for an extended period of time. Fay Ashby (male) acted as mayor *pro tem* in 2004, and Bruckner (female) acted as mayor *pro tem* in October 2004 and from January 17, 2005, through February 13, 2005.

¶ 17 The Department consisted of five to six officers, and it did not provide 24-hour police protection. It contained the ranks of chief, lieutenant, and patrol officer. Balk was the only full-time officer; the remaining positions were part-time. However, there was no distinction in the duties between full-time and part-time officers. The officers were appointed annually. There was no police union or collective bargaining agreement between the Village and the officers. Officers' duties included enforcing laws and patrolling the community.

¶ 18 Carroll assigned Balk to do State and Department paperwork, whereas other officers handled only the paperwork for their cases. Pauley never received complaints about Balk from the sheriff's department, the State police, or the State's Attorney's office. However, Carroll showed Pauley a letter from a bank concerning improper banking activities by Balk. As a result of the activity, Balk was given a five-day suspension without pay.

¶ 19 Schott was a sergeant at the DOC.[2] In February 2001, he became a part-time police officer for the Department, working ten-hour shifts one to two days per week.[3] Groharing and

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[2] The parties stipulated in their joint prehearing memorandum that Schott served as the chief of police of Lanark, Illinois, prior to his employment with the Village, and that during the time he was employed with the Village, he was concurrently employed by the DOC as a full-time correctional officer.

[3] The parties stipulated in their joint prehearing memorandum that Schott's last rate of pay was $11 per hour.

Carroll were his supervisors. Schott never received any disciplinary notices while employed by the Department. Disciplinary actions used to be purged from an officer's file after one year. That policy had since changed, and currently disciplinary actions were not purged.

¶ 20 Balk was married to Brian, who was a Board member. Groharing expressed concern about Brian's involvement on the Board based on Brian's relationship with Balk, as Brian was in a position to make decisions affecting Balk's employment. However, Brian would recuse himself or abstain from voting on issues involving Balk.

¶ 21 Starr became a Board member in 2000. He told Schott that the Board and Pauley thought that Schott was the best employee on the police force. Starr thought that Schott was a better investigator than Balk. He also thought that Groharing was a better investigator than Balk, but that Balk was better at community relations.

¶ 22 Schott and Groharing were friends. They felt that Balk, the only female officer, was treated more favorably. They felt that she did not clean the squad car properly; did not clean the station; spent too much time on the computer; failed to patrol the streets and alleys; deferred calls received during her shift to the next shift; and improperly filled out time sheets. Groharing felt that Balk lacked the ability to maintain relationships and that she was unable to do her job unless accompanied by a second officer.

¶ 23 On February 4, 2004, Groharing sent Starr a letter about concerns that he had with the Department, such as too many hours being worked and the lack of leadership. Starr responded that there was no cause for concern. Starr sent a copy of the letter to Bruckner, who was acting as mayor *pro tem*, and Starr advised Pauley and Carroll of the letter.

¶ 24 A police subcommittee was created to develop a better working relationship within the Department. The subcommittee met periodically and consisted of three Board members:

chairman Brian Gies, Starr, and Hal Hoy. In October 2004, the subcommittee drafted a letter seeking to restructure the Department by eliminating ranks. The police subcommittee revised the police handbook and eliminated the position of lieutenant.

¶ 25 Carroll was police chief in 2003. The police chief typically interviewed applicants for police officer positions and would make recommendations to the subcommittee or the Board president. Carroll was also responsible for evaluating personnel and maintaining and securing personnel files and evaluations. Carroll rated Schott as "commendable" for the period of January 2003 to January 2004. He felt that Schott was a very good officer. For the same period, he rated Balk as "good plus" (a lower rating). The evaluation indicated that Balk needed to improve productivity and her working relationship with Groharing, and that she was late to follow through on paperwork. Evaluations for 2005 were not completed due to ensuing events.

¶ 26 At one time, Schott tendered his resignation out of frustration with the Department. He was asked to reconsider, and he tabled his resignation.

¶ 27 The Board held a special session on April 11, 2005. The minutes indicated that Starr presented a policy on confidentiality of Department information. He felt that Groharing was removing documents from the Department and that he should be terminated for doing so. At the meeting, Starr also proposed an updated job description for police chief.

¶ 28 On April 28, 2005, Schott and Groharing sent a letter of complaint to the Attorney General's office. They claimed unfair treatment due to gender and a lack of action due to the relationship between Balk, Brian, and Brian's father. Schott and Groharing were contacted by the Attorney General's office about the letter, and Carroll and Pauley were notified of the letter.

¶ 29 Previously, on about April 20, 2005, Pauley met with Carroll and asked him to do research on the Department. Carroll determined that part-time officers were supervising full-time officers, against the Village's policy. Carroll resigned on April 30, 2005, after 20 years.

¶ 30 The Board met on May 2, 2005, for a regularly-scheduled meeting. In accordance with a letter Starr prepared after Carroll's resignation, Starr proposed that it was in the Village's best interest that the Department be restructured and none of the currently-employed officers be reappointed.[4] Starr made a motion to declare all Department positions vacant with a review date and recommendation within 60 days. Gies seconded the motion. The Board passed the motion, and it disbanded the Department.[5]

¶ 31 Beryl Jean Smith had been the Village's treasurer, a part-time position, since August 1989. Her duties included preparing the Village payroll and attending Board meetings. The Village had three full-time employees covered under its health plan in 2005, including Balk. Pauley told Smith to pay Balk's health care premium for the month of May 2005 because Balk was employed on May 1, 2005.

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[4] Starr stated in his letter that he was advocating a complete restructuring of the Department "from the ground up" because the Village could satisfy its policing needs and still eliminate three part-time positions; the Illinois Municipal Code prohibited part-time officers from supervising full-time officers, but the Village had a part-time lieutenant and part-time police chief supervising a full-time officer; and Carroll had resigned as chief.

[5] According to the Village's minutes of the meeting, which was admitted as an exhibit, Starr recommended restructuring the Department, not reappointing anyone currently employed by the Department, dissolving the police subcommittee, and having a plan for moving forward within 60 days.

¶ 32 There was an unwritten Village policy that employees whose employment was terminated were eligible to be paid for accrued but unused sick or vacation time. Schott received payment for his unused vacation time. The Village later adopted a written policy that full-time officers would receive pay for vacation and sick/personal days, while part-time officers would not receive vacation pay.

¶ 33 Jeff Doran was the sheriff of Carroll County in 2005 "and held that position for eight years." His office provided additional policing services to the Village, as needed. He had written to Carroll in an effort to achieve better relations between the sheriff's department and the Department. Doran had received complaints that Groharing was making traffic stops outside of the Village. He felt that Balk lacked motivation.

¶ 34 Terry Shanafelt was a retired State police officer and was currently employed part-time with the Department. On May 2, 2005, he was with the sheriff's department. At the May 2, 2005, Board meeting, he was "appointed point coordinator and was deputized by the County with full law enforcement authority." Shanafelt was to conduct background investigations for the hiring of a new police chief and transition any documents to follow through on Department cases. He filled out appointment/separation notices for Balk, Groharing, Carroll, and Schott. Shanafelt had held a meeting in 2005 with the police subcommittee in which he expressed concern about Groharing's "ability" to supervise Balk.

¶ 35 There was consideration of the sheriff's department taking over patrolling duties for the Village, but it was determined not to be cost effective. The sheriff's department had previously subcontracted with the Village to be responsible for patrolling its camping and recreational areas. Had the sheriff's department been able to handle Village policing, the Department may not have been reformed.

¶ 36 On May 11, 2005, there was an advertisement in the local paper for "a full-time police chief and part-time police officers" for the Village. Balk was the only person who applied for the full-time position. Her application included letters of commendation. Without reviewing her personnel file, the subcommittee recommended that Balk be hired as a full-time officer. Starr did not feel the need to review applicants' performance evaluations, and he did not take seriously Groharing's concerns about Balk's alleged favorable treatment.

¶ 37 Schott sent a letter asking to be considered for re-employment, but he did not receive a response to that letter. Carroll would have recommended that Schott and Groharing be reappointed as officers. Pauley did not review Schott's personnel file or speak to Carroll when she decided not to reappoint Schott.

¶ 38 Balk was hired as a full-time officer in June 2005. There was no police chief, and all officers reported to Pauley.[6] Balk received the same rate of pay as before. When she was rehired as an officer, relationships among the Department, school district, and sheriff's department improved. In July 2005, Danny Howard, Dennis Lehman, Matt McGill, Dwayne Hamilton, James Hiher, and Shanafelt were appointed as police officers. In 2007, Jerry Habeler, who was the Village mayor at the time, appointed Balk as police chief.

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[6] At the hearing, Pauley acknowledged that the Village had not advertised a full-time position for an officer, but rather only for a police chief. She testified that the Village would not have rehired Carroll because he was not in a position to accept full-time employment, in that he had another full-time job. Carroll testified that Pauley told him that the Board was going to disband the Department, and she had asked him to retire.

¶ 39 After the Department was disbanded, Schott worked as a dietary supervisor for the DOC from June 2006 to August 2006. He was promoted to lieutenant and became an investigator in November 2008. He was still employed by the DOC in that capacity.

¶ 40 The ALJ made overlapping findings in Groharing's case. We therefore summarize only the findings that are unique to his case.

¶ 41 Groharing was hired by the Village in 1991 as a patrol officer. Carroll appointed him a lieutenant in 1996, and Groharing retained this position until the Department dissolved. As a lieutenant, he was in a supervisory position over Balk and had authority to monitor the patrol officers. He had also worked for the DOC[7] and as a part-time officer for the Lanark police department. His last rate of pay while employed by the Village was $11.35 per hour.

¶ 42 Groharing was off work for two to three months in 2003 due to a back injury unrelated to his work for the Village. On September 4, 2003, he was cited for non-performance, in that he used his rank inappropriately, made threats at his son's school, was disrespectful, and was overly aggressive at times. Groharing refused to sign the citation letter. He was given a one-year probation and remedial steps to resolve the concerns listed in the letter. Pauley did not return Groharing to active status when he received a full release from his doctor because she was concerned about whether he could work effectively with various Village law enforcement agencies.

¶ 43 In Groharing's evaluation for the period of January 2002 to January 2003, Carroll gave him an overall rating between "good" and "commendable." For his evaluation for the period of January 2003 and January 2004, Carroll gave him an overall rating of "good plus." The

[7] Groharing testified that he worked at the DOC full-time while employed by the Department.

evaluation indicated a need to improve productivity. It also indicated that Balk should improve her working relationship with him.

¶ 44 Bruckner sent Groharing a letter dated October 25, 2004, giving him three months to comply with certain directives, at which time he would be reevaluated. He was to improve working relationships with the sheriff's department, reestablish a positive working relationship with all Department officers, improve professional relationships with the Thomson school administration and personnel, and improve the community's perception of him.

¶ 45 At some point, Groharing became aware that the Village had received invoices from "LTD Commodities." Groharing reported this to Carroll, who assigned him to conduct an investigation. Groharing concluded that Balk had provided false information to set up a Village account for the purchase, in that billing was in the Village's name but with Balk's home address. Groharing expressed concerns to Starr that taxes on the purchase had not been paid; Starr determined that they had been paid. Groharing also discussed the issue with Gies. Gies advised Balk not to use that account and to pay the bill. Pauley then determined that the matter was closed.

¶ 46 On occasion, Balk would not turn in her "report of call" logs, and Groharing would ask where they were. He did not have any problems with other officers' logs. At one point, Groharing brought officers' logs and documents with the officers' Social Security numbers to Starr's home.

¶ 47 Starr received a document from Shanafelt showing that Groharing had purchased tires in 2004 for his personal vehicle, using the Village discount. Groharing stated that Carroll had authorized the purchase because Groharing sometimes used his vehicle for investigations. Groharing saved $170 by purchasing the tires through the Village account.

¶ 48 Balk kept a private diary or journal that was critical of Groharing. She left it in a squad car, and Schott found it and gave it to Groharing. Groharing was directed to return the diary to Balk, but he was unable to find it.

¶ 49 After the Department was disbanded and Groharing was not rehired, he found work with the Earlville and Lanark police departments. However, the combined hours were less than Groharing had with the Department. In late 2005 or early 2006, Groharing asked the State police to investigate Balk. Groharing left Earlville in fall 2009.

¶ 50 The ALJ ruled that both Schott and Groharing failed to prove, by a preponderance of the evidence, their "claims of discrimination due to unequal terms and conditions of employment or gender." However, she found that they had established, by a preponderance of the evidence, that the Village retaliated against them for engaging in a protected activity, in violation of the Act. As the ALJ's legal conclusions on this issue largely overlap for both men, we summarized these conclusions together.

¶ 51 The men complained that they encountered retaliation when they complained about Balk's favorable treatment and her failure to perform her duties satisfactorily. In order to establish a *prima facie* case of retaliation, a person must show that: (1) he engaged in a protected activity; (2) the respondent took an adverse action against him, and (3) there was a causal connection between the protected activity and the adverse action. Regarding the first element, the men lodged complaints against Balk, which was a protected activity. According to them, bringing these concerns to Carroll and Pauley did not resolve the issues. The complaints culminated in the men sending a letter to the Attorney General's office dated April 28, 2005, claiming unfair treatment, another protected activity. The second element was established by the men's discharge without recall.

¶ 52 The ultimate issue in a retaliation case was whether the adverse action was taken as a result of a person engaging in a protected activity, creating a causal connection. Once a complainant makes a *prima facie* case, the respondent must show a legitimate, non-discriminatory reason for the adverse action. If the respondent is successful, the complainant must prove, by a preponderance of the evidence, that the respondent's articulated reason is a pretext for discrimination.

¶ 53 In retaliation cases, the Commission had considered the time lapse between the protected act and the adverse action in determining whether there had been retaliatory discrimination. Commission rulings had determined that six months was too remote to give rise to a causal connection.

¶ 54 It was clear from testimony and exhibits that the Village was concerned about Groharing's behavior on the job. As early as 2003, the Village advised Groharing that parking his car on the street was against the law. In 2004, Pauley had concerns about Groharing working harmoniously with the Department and with area law enforcement agencies. The Village provided Groharing with remedial steps to resolve the issue, but he did not take those steps. Nevertheless, Groharing's last evaluation showed a rating between "good" and "commendable." If the Village had been sufficiently concerned about Groharing's actions, it would have responded to them in 2003 or 2004.

¶ 55 The evidence showed that: on April 28, 2005, Groharing and Schott wrote a letter to the Attorney General's office about Balk; on May 2, 2005, the Department was disbanded; and in June 2005, the Village began to reappoint police officers but did not reappoint Groharing and Schott. The events were sufficiently close in time to suggest a causal connection between the

protected act, being the April 28, 2005, letter, and the Village's adverse action of failing to reappoint the men in June 2005. Thus, the third element of retaliation was satisfied.

¶ 56 Whether an employer's articulated reason for an adverse employment decision was pretextual in nature was a question of fact. A complainant may establish pretext in one of the four ways: (1) the employer's explanations were not worthy of belief; (2) the explanation had no basis in fact; (3) the explanation did not actually motivate the decision; or (4) the explanation was insufficient to motivate the decision.

¶ 57 The Village took the position that if Schott were reappointed, the other officers would not work for the Village. That explanation had no basis in fact. There were no complaints or disciplinary actions against Schott, and there was testimony that he was a good police officer. The explanation was also insufficient to motivate the decision. The Village suggested that Schott was in tandem with Groharing concerning Balk. However, Schott was performing his job satisfactorily, and Carroll evaluated him as commendable. Therefore, Schott's actions as a police office did not warrant non-reappointment.

¶ 58 The only testimony that the Village provided was that Groharing caused dissension within the ranks of the Department and with other agencies. There was no testimony that Schott was contentious, other than that he aligned himself with Groharing regarding the concerns about Balk. If the Village was sufficiently concerned about Schott's actions prior to April 28, 2005, it clearly had the opportunity to act upon those concerns. Similarly, the Village had opportunities to not reappoint Groharing beginning in 2003. The only difference in its subsequent decision not to rehire them was that the men had submitted a complaint to the Attorney General's office.

¶ 59 Schott's tie-in with Groharing, and their follow-through on their complaints about Balk, was the impetus for the Village not reappointing them after the Department's reformation; Schott

and Groharing were the only prior police officers that were not reappointed. Accordingly, the men had sufficiently proven that the Village retaliated against them for engaging in a protected activity, in violation of the Act.

¶ 60 On the subject of damages, the ALJ recommended that Schott receive $35,534 as compensation for lost back pay and that Groharing receive $33,461.14 as compensation for lost back pay, both with prejudgment interest. The ALJ also recommended awarding attorney fees, to be determined following the filing of motions.

¶ 61 D. Subsequent Proceedings

¶ 62 On February 20, 2013, the men's attorney filed petitions for fees and costs with the Commission. On March 4, 2013, the Village filed objections to the ALJ's recommended liability determinations. The Village argued that the men did not sufficiently establish that they were retaliated against when they engaged in a protected activity. It alternatively argued that the damage calculations were erroneous and needed to be adjusted. On April 9, 2013, the Village filed objections to the petitions for fees and costs. On March 26, 2014, the ALJ filed orders recommending that the Village pay Schott $29,970 and Groharing $29,969.55 for reasonable attorney fees. The ALJ arrived at these figures after reducing the fee award by 10% to account for the men not being successful on all of their claims. The ALJ recommended denying their requests for reimbursement of costs. On April 24, 2014, the Village filed motions objecting to the awards of attorney fees.

¶ 63 On May 28, 2015, the Commission declined further review on the cases. It adopted the ALJ's recommended orders as its own. On June 26, 2015, the Village mailed petitions for rehearing before the full Commission. On December 1, 2015, the Commission denied the petitions. The Village timely appealed. See 775 ILCS 5/8-111(B)(1) (West 2014) (providing for

direct appeal to the appellate court of a final order of the Commission); Ill. Sup. Ct. R. 335 (eff. Oct. 15, 2015). We subsequently consolidated Schott's and Groharing's cases. Schott and Groharing have each filed appellee's briefs, and the Illinois Attorney General has filed appellee's briefs on behalf of the DHR and the Commission.

¶ 64 II. ANALYSIS

¶ 65 We begin by setting forth the standard of review. We will accept the Commission's factual findings unless they are against the manifest weight of the evidence. 775 ILCS 5/8-111(B)(2) (West 2014); see also 735 ILCS 5/3-110 (West 2014) (an administrative agency's findings and conclusions on questions of fact are to be taken as *prima facie* true and correct). An administrative agency's finding is against the manifest weight of the evidence if the opposite conclusion is clearly evident. *Speed District 802 v. Warning*, 242 Ill. 2d 92, 137 (2011). It is within an administrative agency's province to resolve any conflicts in the evidence and determine witnesses' credibility. *Peterson v. Board of Trustees of the Firemen's Pension Fund of City of Des Plaines*, 54 Ill. 2d 260, 263 (1973).

¶ 66 Where the dispute is an agency's conclusion on a point of law, we review the agency's decision *de novo*. *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368, 387 (2010). An intermediate standard applies for mixed questions of law and fact, which occurs where the dispute pertains to the legal effects of a set of facts. *Hanks v. Illinois Department of Healthcare & Family Services*, 2015 IL App (1st) 132847, ¶ 19. More specifically, a mixed question of law and fact is present "where the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard." *Provena Covenant Medical Center*, 236 Ill. 2d at 387. We review mixed questions of law and fact for clear error. *Id.* An agency's decision is clearly erroneous only where the reviewing court is left

with a definite and firm conviction that the agency committed a mistake. *Id.* at 387-88. The clearly erroneous standard is considerably deferential. *Id.* at 387.

¶ 67 A. Retaliation

¶ 68 The Village first argues that the ALJ erred in ruling that it had retaliated against the men for filing complaints alleging violations of the Act. The Village argues that the central issue is whether it had the paramount right to exercise its discretion and not reemploy/reappoint the men because the Department could more efficiently/effectively function without them. The Village also points out that the men were both part-time officers, whereas Balk was a full-time officer both before and after the Department's dissolution.

¶ 69 Under the Act, it is a civil rights violation for a person or persons to:

> "[r]etaliate against a person because he or she has opposed that which he or she reasonably and in good faith believes to be unlawful discrimination *** because he or she has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this Act[.]" 775 ILCS 5/6-101(A) (West 2014).

¶ 70 The Village cites *Rozsavolgyi v. City of Aurora*, 2016 IL App (2d) 150493, ¶ 115, where this court held that the Local Government and Governmental Employees Tort Immunity Act (Tort Immunity Act) (745 ILCS 10/1-101 *et seq.* (West 2014)) applies to actions under the Act, and that a city could assert immunity with respect to the plaintiff's requests for damages but not to her requests for equitable relief. It is unclear what point the Village is seeking to make with this citation. The Tort Immunity Act is an affirmative defense that will be forfeited if it is not pleaded (*Decatur Park District v. City of Decatur*, 2016 IL App (4th) 150699, ¶ 30), and the Village did not raise this defense in its answers to the complaints. Moreover, Schott and

Groharing received compensation in the form of lost back pay, and the Tort Immunity Act does not provide immunity with respect to equitable relief, which includes back pay. *Rozsavolgyi*, 2016 IL App (2d) 150493, ¶ 110.

¶ 71 The Village also cites *Phillips v. Hall*, 113 Ill. App. 2d 409, 419-20 (1983), where a police chief ordered an officer to terminate his part-time employment as an officer for another town. The court stated that the efficiency of public employees was a legitimate and substantial government interest, and the uncontroverted evidence showed that the police chief's motives were rationally based on the best interests of the police department. The Village argues that it could also have decided not to reemploy Schott and Groharing due to, among other things, their concurrent full-time employment at the DOC together. The Village's argument is not persuasive, as it does not refer to any evidence showing that the men's outside employment was a factor in its decision not to rehire them.

¶ 72 The Village additionally cites *Albert v. Board of Fire & Police Commissioners of the Village of Schiller Park*, 99 Ill. App. 3d 688, 692 (1981), where the court stated that it could not conclude that a police board acted arbitrarily in terminating an officer who was drunk, disorderly, absent from work without leave, missed a court date, and was frequently tardy. The Village also cites *Connick v. Meyers*, 461 U.S. 138, 151 (1983) (the government has wide discretion and control over the management of its personnel and internal affairs, including the right to remove employees), and *Cook County Police Ass'n v. City of Harvey*, 8 Ill. App. 3d 147, 149 (1972) (municipality had both express and statutory authority to deal with its policemen and the authority implicitly necessary for the administration of its police force). The Village argues that it could have decided not to rehire Schott and Groharing because they were part-time workers, as opposed to Balk, who was full-time, and because they had poor working

relationships with Balk and strong connections to each other. We note that it is undisputed that a municipality has discretion over hiring and firing employees. The more narrow issue here involves the Commission's determination that the Village's articulated reasons for not rehiring the men were pretextual.

¶ 73 The Village further cites *University of Texas Southwestern Medical Center v. Nassar*, 133 S. Ct. 2516, 2531-33 (2013), regarding retaliation. However, the Village's citation consists of two pages of single spaced block quotes, without further commentary on the citation or an explanation of how it pertains to this case. Illinois Supreme Court Rule 341(a) (eff. Jan. 1, 2016) states: "Quotations of two or more lines in length may be single-spaced; however, lengthy quotations are not favored and should be included only where they will aid the court's comprehension of the argument." Moreover, the failure to clearly define issues results in forfeiture of the argument. See *People v. Olsson*, 2014 IL App (2d) 131217, ¶ 16. Accordingly, we do not consider this citation further.

¶ 74 The Village notes that the ALJ found that the short amount of time that passed between the men's complaints to the Attorney General and the Village's decision not to rehire them evidenced retaliation. The Village cites *Bagwe v. Sedgwick Claims Management Services, Inc.*, 811 F.3d 866, 888 (7th Cir. 2016), where the Seventh Circuit stated, "temporal proximity, without additional evidence, is rarely sufficient to establish a causal connection." (Internal quotation omitted.) The Village argues that the ALJ's conclusion is also contrary to its statement that, due to the contentiousness between the men and the Village, reinstatement would be futile. The Village additionally argues that the men could not have "reasonably and in good faith" (see 775 ILCS 5/6-101(A) (West 2012)) believed that it had subjected them to unlawful

discrimination and/or retaliation as required by the statute, because the Commission found that they were not discriminated against. We address these contentions later in the disposition.

¶ 75 The Village argues that the ALJ's finding of retaliation is particularly in error when considering the testimony of seven witnesses. The Village cites to page ranges of each witnesses' entire testimony (totaling over 900 pages of the record), without explaining what specific portions of the testimony support its argument. Illinois Supreme Court Rule 341(h)(7) (eff. Jan. 1, 2016) requires citation to pages of the record relied on, and the Village's manner of citing testimony does not meaningfully comply with this requirement, nor does the Village clearly articulate how the testimony aids its position. Accordingly, we do not consider the individual witness testimony separately. See *Melamed v. Melamed*, 2016 IL App (1st) 141453, ¶ 21 (a reviewing court is entitled to have issues clearly defined with pertinent authority and cohesive arguments; it is not our function to act as an advocate or search the record for error).

¶ 76 In cases involving employment discrimination under the Act, Illinois courts have adopted the analytical framework used for addressing Title VII and other federal statutes. *Rozsavolgyi*, 2016 IL App (2d) 150493, ¶ 66. Under this framework, a plaintiff can prove discrimination through either "direct evidence" or "the indirect method of proof." *Id.* For the indirect method, such as that at issue in this case, courts use the analysis in the United States Supreme Court case, *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *Id.* ¶ 67. The plaintiff must first establish a *prima facie* case of discrimination, which creates a rebuttable presumption that the employer unlawfully discriminated. *Id.* ¶ 67. To prove a *prima facie* case of retaliation under the Act, a plaintiff must prove that: (1) he or she was engaged in a protected activity; (2) the employer committed an adverse act against him or her; and (3) a causal connection existed between the protected activity and the adverse act. *Terada v. Eli Lilly & Co.*, 2015 IL App (5th)

140170, ¶ 25. To rebut the presumption, the employer must articulate a legitimate and nondiscriminatory reason for the action. *Rozsavolgyi*, 2016 IL App (2d) 150493, ¶ 67. If the employer meets this burden, the presumption disappears, and the plaintiff must prove by a preponderance of the evidence that the employer's articulated reason was a pretext for unlawful discrimination. *Id.* A plaintiff can show pretext by showing that: (1) the articulated reason had no basis in fact; (2) the reason did not actually motivate the employer's decision; or (3) the reason was insufficient to motivate the employer's decision. *Sola v. Illinois Human Rights Comm'n*, 316 Ill. App. 3d 528, 537 (2000).

¶ 77 Regarding the *prima facie* case of discrimination, the Commission found that the men engaged in a protected activity by voicing their complaints to their superiors about Balk's alleged disparate treatment as a female, and by sending a letter to the Attorney General's office. The Commission found that the men proved the second element by showing that their employer took an adverse action against them, in that the Village dissolved the Department and rehired everyone except them. The Village does not directly dispute these elements. Rather, its arguments involve the third element, regarding whether there was a causal connection between the protected activity and the adverse act.

¶ 78 A plaintiff may establish a *prima facie* case of discrimination based on retaliation by showing a short span between the time he or she filed a charge of employment discrimination or otherwise opposed discrimination practices, and the time the employer acted adversely. *Illinois v. Human Right Comm'n*, 178 Ill. App. 3d 1033, 1052 (1989). Thus, Schott and Groharing established a *prima facie* case of discrimination based on the fact that they sent a letter dated April 28, 2005, to the Attorney General's office complaining of unfair treatment; the Village decided to disband the Department on May 2, 2005; and in the following months, the Village

rehired all officers except them. Thus, the Village next had the burden to articulate a legitimate and nondiscriminatory reason for its actions. See *Rozsavolgyi*, 2016 IL App (2d) 150493, ¶ 67. In its brief, the Village argues that the men were part-time while Balk was full-time; Schott and Groharing had strong connections to each other and a poor working relationship with Balk; and it determined that the Department would function more efficiently and effectively without them. We again note that our review of this issue is hampered by the Village's failure to cite to any specific testimony in the record to support its argument.

¶ 79 In any event, the Commission accepted that the Village articulated legitimate and nondiscriminatory reasons for the action. However, it then determined that these reasons were pretextual. Whether an employer's articulated reason is pretextual is a question of fact. *Clark v. Illinois Human Rights Comm'n*, 312 Ill. App. 3d 582, 588 (2000) (citing *Zaderaka v. Illinois Human Rights Comm'n*, 131 Ill. 2d 172, 180 (1989)). The Village argues that this issue should be decided under the clearly erroneous standard. However, in doing so, it does not attempt to explain why the analysis in *Zaderaka* is incorrect or inapplicable. As we are bound by the decisions of the Illinois Supreme Court (see *People v. Jenk*, 2016 IL App (1st) 143177, ¶ 26), we apply the manifest-weight-of the-evidence standard, used for factual findings, to the finding that the Village's articulated reason was pretextual.

¶ 80 We conclude that the Commission's finding, that the Village's articulated reasons for not rehiring the men was pretextual, was not against the manifest weight of the evidence. The Village's explanation that it did not rehire Schott and Groharing because they were part-time whereas Balk was full-time is not persuasive, as the remainder of the Department's part-time officers were rehired, and two other part-time individuals were hired in place of Schott and Groharing. The men's strong connections to each other are potentially relevant only if the

evidence showed that the Village did not retaliate by firing either one of them. The Village, in its reply brief, labels Groharing as the "instigator" seeking to undermine Balk. It argues that even if only Schott was reappointed, Groharing could have continued to undermine Balk through Schott. However, Pauley testified that when Groharing was off work for a few months due to his injury, "the other officers all seemed to be getting along," and she specified that this included Schott.

¶ 81 Ultimately, the main question is whether it was clearly evident that the Village did not rehire the men because it determined, in its discretion, that the Department could function more efficiently and effectively without them, at least in part due to a poor working relationship with Balk. See *Speed District 802*, 242 Ill. 2d at 137 (an administrative agency's finding is against the manifest weight of the evidence if the opposite conclusion is clearly evident).

¶ 82 There was no record of complaints against Schott or evidence that he was ever reprimanded or disciplined. To the contrary, in Schott's last performance evaluation, for the period of January 2003 to January 2004, Carroll rated him "commendable" overall, stating that he was an "exceptional officer giving 101% most of the time." Carroll also rated him as "commendable" in the specific area of interpersonal relationships, stating that he "gets along well with all officers." For the same time period, Carroll rated Groharing as between "good" and "commendable" overall. Groharing was rated as "satisfactory" in the area of interpersonal relationships. Carroll opined at the hearing that both Schott and Groharing were "good" officers, whereas Balk was a "fair" officer because she lost motivation over the years. He also testified that he would have recommended rehiring all three officers. Pauley testified that she valued Carroll's opinions, including his opinions of officers. Starr testified that, based on input from Carroll, in February 2005 he told Schott that he was the most efficient officer in the Department.

¶ 83 We recognize that there was evidence of some concerns regarding Groharing's behavior as an officer, to the extent that he was cited in a September 4, 2003, letter and told to take remedial steps. However, Carroll rated Groharing positively in prior and subsequent evaluations. The Commission also stated that Pauley had concerns in 2004 about Groharing's relationships within the Department and with area law enforcement agencies. However, the Commission pointed out that if the Village was sufficiently concerned about Groharing's action, it would have responded to them in 2003 or 2004. Moreover, "[o]ne could be performing a job in an unsatisfactory manner[,] but all or part of the motivation for discharge could nevertheless be unlawful discrimination." *ISS International Service System, Inc., v. Illinois Human Rights Comm'n*, 272 Ill. App. 3d 969, 978 (1995).

¶ 84 Here, there was evidence that the men complained to Carroll and Board members that Balk was being treated more favorably because she was female. They also sent a letter to the Attorney General's office dated April 28, 2005, which included complaints of gender discrimination. Pauley and Starr testified that the Village was aware of the letter when the Board decided to disband the Department. Although the Village minutes indicated that the dissolution was done to, at least in part, resolve the issue of a full-time officer reporting to part-time superiors, there was evidence that the timing was suspect. In particular, Starr testified that he was aware of this problem in late 2004, and notes of police subcommittee meetings from the months before the men filed their complaint with the Attorney General's office do not show that it was contemplating dissolving the Department. To the contrary, minutes from the Board meeting on March 7, 2005, state: "Starr reported on the restructuring of the Police Department and stated we are on track to make a better motivated department."

¶ 85 The evidence also showed that a dissolution was not required to resolve the issue of a full-time officer reporting to a part-time officer. Pauley testified that she could have had all of the officers report to her directly, which is what she had Balk do after her rehire, and Pauley also testified that she had the authority to hire and fire individual officers. Starr likewise testified that the Department did not have to be disbanded to resolve the full-time/part-time issue. Gies testified that the Village dissolved the Department because Schott and Groharing "had become a total pain in the ass" to the Board, and it thought that the best way to resolve the issue was to disband the Department and hire a new chief.

¶ 86 We recognize that all officers were initially discharged due to the dissolution, and that the Commission found that the Village may not have reformed the Department if the sheriff's department had been able to take over Village policing. However, the evidence showed that the Village placed an ad for hiring new officers on May 11, 2005, shortly after the Department's dissolution. Significantly, the Commission also found that the retaliation took the form of rehiring all previous officers who applied, except Schott and Groharing. Instead, the Village hired two new part-time officers to replace them. As stated, a short time span between complaints of discrimination and an employer's adverse action can be considered in determining whether there was retaliation. See *Human Right Comm'n*, 178 Ill. App. 3d at 1052. We agree with the Village that temporal proximity does not create a casual connection on its own (see *Bagwe*, 811 F.3d at 888), but here the evidence also showed that the officers had good performance evaluations and that the Village could have previously fired or not reappointed them for its articulated reasons but did not act until almost immediately after the men filed a complaint with the Attorney General's office. The Village did not even go so far as to look at the men's personnel files before deciding not to rehire them, even though their ratings were equal

or superior to Balk's, and they had never been disciplined, unlike Balk's five-day suspension without pay for improper banking activities. Pauley herself testified that the Village did not rehire Schott because in the year before the Department was disbanded, he and Groharing were complaining about Balk not performing her duties and being favored. That is, the evidence showed that the men's complaints against Balk included gender discrimination, and Pauley generally referred to those complaints as a reason that the Village did not rehire Schott, which is in keeping with the Commission's findings. Gies similarly testified that the Village did not rehire the men because the Board considered them "a pain."

¶ 87 Although the Commission found that reinstatement of the men would not "be feasible," it was referring to reinstatement following its decision, as opposed to the rehiring that took place in June 2005. It stated that there could be dissention between the men and the Department due to the filing of the case before it, and reinstatement would also require terminating current officers. Thus, there is no contradiction between the Commission's ruling that the Village retaliated against the men and its determination that reinstatement would be improper. Moreover, there is no inconsistency in the Commission's determination that the men failed to prove their gender discrimination claims yet succeeded in the retaliation claims. The statute requires that a person have opposed only what "he or she reasonably and in good faith believes to be unlawful discrimination" (775 ILCS 5/6-101(A) (West 2014)); the statute does not require that a person be able to legally prevail in such a claim. Here, Schott and Groharing tried for over one year to resolve their concerns within the Department and the Village before seeking assistance from outside agencies, which could be construed as evidence of reasonableness and good faith. The Village argues that the Attorney General's office has no jurisdiction or authority in gender discrimination issues, but even if the men were mistaken in which agency to direct their

complaints, it does not equate to bad faith. See also *Dana Tank Container, Inc. v. Human Rights Comm'n*, 292 Ill. App. 3d 1022, 1025 (1997) (in applying the portion of section 6-101(A) prohibiting retaliation against a person bringing a charge under the Act, there is no requirement for the charge to be meritorious).

¶ 88 If there is evidence in the record which fairly supports an agency's decision, the decision is not against the manifest weight of the evidence and must be sustained on review. *L.F. v. Department of Children & Family Services*, 2015 IL App (2d) 131037, ¶ 47. As there was evidence supporting the Commission's finding that the Village's articulated reasons for not rehiring the men was pretextual, we have no basis to disturb this finding. Correspondingly, the Commission's determination that the men had proven their allegations of retaliation was not clearly erroneous.

¶ 89 B. Back Pay

¶ 90 The Village next argues that the Commission erred in awarding Schott $35,534 and Groharing $33,461.14, plus interest, as compensation for lost back pay. The Village points out that the men were working for the DOC full-time while also employed by the Department. The Village cites the following passage from *People ex rel. Bourne v. Johnson*, 32 Ill. 2d 324, 330 (1965):

> "We therefore conclude that where an employee simultaneously holds two compatible jobs and is wrongfully discharged from one, his employer may not set off the earnings from the remaining job against liability for lost wages in the absence of proof of a lack of diligence by the employee in seeking additional employment or that the remaining job was regarded as a complete substitute for the prior dual employment."

The Village argues that the men's failure to try to increase the number of hours that they worked at the DOC as a substitute for the number of hours that they worked for the Department shows the lack of diligence mentioned in *Bourne*. The Village maintains that although both men also found additional employment with other police departments, there was a lack of evidence that they could not have worked additional hours there to make up for the time they would have worked for the Village.

¶ 91 The Commission and DHR argue that the Village has forfeited its argument by failing to raise it during the administrative proceedings. We agree. See *Zurek v. Petersen*, 2015 IL App (1st) 150508, ¶ 26.

¶ 92 Even absent forfeiture, the Village's argument is not persuasive. " 'The amount of damages awarded to a prevailing complainant under the Human Rights Act must be affirmed on review absent an abuse of discretion.' " *Szkoda v. Illinois Human Rights Commission*, 302 Ill. App. 3d 532 (1998) (quoting *City of Chicago v. Human Rights Comm'n*, 264 Ill. App. 3d 982, 987 (1994)); see also *Windsor Clothing Store v. Castro*, 2015 IL App (1st) 142999, ¶ 48 (applying same standard). At the same time, whether an employee mitigated his or her damages is a question of fact that we review under the manifest-weight-of-the-evidence standard. See *Raintree Health Care Center v. Human Rights Comm'n*, 275 Ill. App. 3d 387, 396 (1995).

¶ 93 In *Bourne*, our supreme court stated that to reduce damages for lost wages, the employer must show that the discharged employee could or did have other earnings after the wrongful discharge. *Bourne*, 32 Ill. 2d at 329. In the language the Village quotes, the court stated that where an employee has two or more compatible jobs and is discharged from one of them, "his employer may not set off the earnings from the remaining job against liability for lost wages" without proof that the employee lacked diligence in seeking additional employment or that the

remaining job was considered a complete substitute for the prior dual employment. *Id.* at 330. Thus, the burden was on the Village, as the employer, to provide proof of lack of diligence, not the reverse. See also *Crittenden v. Cook County Comm'n on Human Rights*, 2012 IL App (1st) 112437, ¶ 70 (the employee was required to exercise reasonable diligence in mitigating damages, but the employer had the burden of proving that the employee failed to reasonably mitigate her damages); *Calabrese v. Chicago Park District*, 294 Ill. App. 3d 1055, 1068 (1998) (it is the employer's burden, rather than the employee's, to prove the amount of mitigation earnings in order to reduce the damage award).

¶ 94 Where the record contains competent evidence to support the determination that the employee took reasonable efforts to mitigate his damages, the Commission's decision must be upheld. *Raintree Health Care Center*, 275 Ill. App. 3d at 396. Here, there was evidence that following the Department's dissolution, both men eventually obtained part-time jobs in other police departments, in addition to their DOC jobs, albeit for fewer hours than they were working for the Department. The Village had the opportunity to conduct discovery but did not present any evidence that the men failed to reasonably mitigate their damages, so the Commission's findings to the contrary are not against the manifest weight of the evidence. As the Village does not raise any other arguments as to why the damage awards are improper, we do not address the issue of damages further.

¶ 95 C. Attorney Fees

¶ 96 Last, the Village argues that the Commission erred in the amount of attorney fees that it awarded in each case. The Village asserts that because the men prevailed as to only one of the three claims that they each made, their attorney fees should be reduced by at least two-thirds.

The Village maintains that the Commission's reduction of only 10% of the fees to account for the unsuccessful claims was arbitrary and capricious.

¶ 97 Under the Act, the Commission may award attorney fees to the prevailing party. 775 ILCS 5/8B-104(D) (West 2012). We apply an abuse-of-discretion standard when reviewing a fee award pursuant to the Act. See *Raintree Health Care Center*, 275 Ill. App. 3d at 494.

¶ 98 The men argue that they were awarded the vast economic losses that they sought and that the back wages that they received were the same wages that they would have been awarded under any of their three theories of recovery. They argue that if any aspect of the decision was improper, it was the ALJ's reduction of the fee request by an "arbitrary" 10%.

¶ 99 The DHR and the Commission cite *Brewington v. Department of Corrections*, 161 Ill. App. 3d 54 (1987). There, the plaintiff did not succeed on her claim that she was constructively discharged, so she did not receive back pay or reinstatement. *Id.* at 66. However, she succeeded in her claim that the Department of Corrections discriminated against her and women in general, and she obtained an order prohibiting further discrimination against women in shift change policy. *Id.* The Commission awarded the plaintiff the attorney fees she sought, with a reduction of 10% because she did not receive all of her requested relief, and minus 40 hours of duplicative efforts by law students. *Id.* at 57. The appellate court affirmed, stating that the case was one involving a common core of facts or related legal theories, as opposed to distinctly different claims for relief, meaning that much of the attorney's time was devoted to the litigation as a whole. *Id.* at 65-66; see also *Northtown Ford v. Human Rights Comm'n*, 171 Ill. App. 3d 479, 490 (1988) (an attorney fee award may be appropriate where work on the unsuccessful claim is related to work on the successful claim).

¶ 100 We conclude that, as in *Brewington*, this case involved a common core of fact and related legal theories. That is, in order to prove that the Village retaliated against the men for pursuing relief under the Act, it was necessary to understand the circumstances leading to the men's complaints of discrimination and the Village's actions in response to their complaints, which were facts which also related to the discrimination claims. Moreover, as Schott's and Groharing's attorney points out, the relief that they received, in the form of back wages, would have likely been the same under any of their claims. Accordingly, we conclude that the Commission acted within its discretion by reducing the attorney fee award by just 10% to account for their unsuccessful claims. *Cf. Mendez v. Town of Cicero*, 2016 IL App (1st) 150791, ¶ 23 (where employee received reinstatement as a result of her claim that her job transfer was retaliatory, but did not receive monetary relief, the trial court did not err in reducing the claimed attorney fees by 10% and awarding $339,412.09 in fees and costs).

¶ 101 III. CONCLUSION

¶ 102 For the foregoing reasons, we affirm the orders of the Commission.

¶ 103 Affirmed.