

City settles with fire officials who alleged discrimination

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AMERICAN-STATESMAN STAFF

Updated: 7:49 a.m. Saturday, Aug. 27, 2011

Published: 7:44 p.m. Thursday, Aug. 25, 2011

The Austin City Council voted Thursday to settle a lawsuit brought by two white former Austin Fire Department battalion chiefs who alleged the city discriminated against them by promoting two lower-ranking minority firefighters over them.

The council voted unanimously to award former battalion chiefs Greg Nye and Don Smith \$850,000, about half of which will go to lawyers' fees, city officials said.

The lawsuit was filed in December 2009. In the suit, Nye and Smith said Chief Rhoda Mae Kerr reached down the chain of command to promote Lt. Richard Davis, who is black, and Lt. Matt Orta, who is Hispanic, four ranks to become assistant chiefs. Davis and Orta were promoted to replace two outgoing assistant chiefs who also are black and Hispanic.

Fire Department officials declined to comment on the settlement on the advice of the city attorney, department spokeswoman Michelle DeCrane said.

The lawsuit alleged Kerr violated the law by only promoting Davis and Orta on the basis of their race, and it said both were "average at best lieutenants." It said that Nye and Smith were higher-ranking officials who had exemplary marks and had each served just less than 30 years with the department. Davis and Orta had 16 and 17 years of experience, respectively.

"Putting race on the scale and allowing it to outweigh merit — indeed, not even consulting anything but race in making the first cut about whom to consider for the job — is blatantly illegal," the lawsuit said.

The attorney for Nye and Smith, Kevin Terrazas, said Thursday that he is satisfied with the settlement.

"This was a tough case for all sides," Terrazas said. "We believe the settlement received is a fair settlement. Hopefully it will allow all sides to go forth with their business and the Fire Department can go forward with their good mission."

City staff recommended that the council settle the suit.

The lawsuit alleged that in April 2009, Kerr, acting under a mandate from the City Council to diversify the fire department, made a list of firefighters above the rank of lieutenant and then interviewed three minority candidates for the assistant chief positions. One of them turned down the job, the suit said.

Kerr then sent a memo to the city manager's office saying promoting Davis and Orta would "accomplish her goal to increase diversity at the executive level," the lawsuit said. The suit said that certain assistant chief positions at the department had been set aside for minorities since at least the late 1990s.

The settlement is the latest controversy at the Fire Department over minority recruitment and hiring.

More than two years ago, firefighters rejected a labor contract with the city because the two sides could not agree on how cadets should be hired.

In December, fire union officials said they were upset at how the city planned to score exams and filed a grievance against the department.

In May, fire officials announced they had to administer oral exams to more than 2,500 prospective firefighters amid concerns that confidential test questions had been leaked to give some applicants an unfair advantage.

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