

# Legal battles could be up next

## Some experts think league will try to declare an impasse

By **CHUCK CARLTON / The Dallas Morning News**

The 2004-05 NHL season ended Wednesday before it ever began.

The battle between players and ownership may have just started, according to several labor law experts.

The next move will almost certainly come from the NHL. Commissioner Gary Bettman indicated that the NHL's Board of Governors would soon begin planning for a full 2005-06 season.

"You can probably fully expect sometime in the near future they'll declare an impasse and implement their final offer," said Mike Asensio, a labor and employment attorney with the national law firm of Baker & Hostetler LLP.

The players association would be able to file an unfair labor practice with the National Labor Relations Board. The union will probably take a two-pronged attack, according to Asensio.

The first charge will claim the league bargained in bad faith. The second, which Asensio believes will be a stronger argument, is that the parties hadn't reached a negotiating impasse.

"That will be their argument," Asensio said. "Can they sell it to the board and prevail legally?"

In the 48 hours before the season was canceled, the union dropped its opposition to a salary cap, while the owners agreed not to link player salaries to revenue.

**"When the logjam of salary cap vs. no salary cap was resolved, now it became a dispute about money and only money," said Mike Sullivan, a labor and employment attorney with Chicago law firm Goldberg Kohn.**

The process leading to an initial hearing can often take four to six months, and a decision might not come until 2006, Asensio said. Either side can appeal to the federal courts.

The NHL could continue to operate under the contract it imposed but might be subject to monetary damages – eventually.

"It's not unheard-of for employers to do this and implement contracts that go for years because the union just loses its energy," said Bill Adams of Kentucky-based labor management consultants Adams, Nash, Haskell & Sheridan.

Adams said management has the advantage.

"It's a shame for the players," Adams said. "They'll never make up the money they lost in this lockout. Never. They'll never live long enough or skate long enough, even if they got an increase."

The NHL's six Canadian franchises could complicate matters further. They are subject to labor law in four provinces. That could lead to conflicting rulings and "chaos and confusion," according to Asensio.

Also unclear is whether the NHL would be allowed to use replacement players. The NFL used replacements for three weeks during the 1987 strike, but the NLRB prevented baseball from using replacements in 1995.