

New union with voice and soul

Creative Workers Union of South Africa

Want to be a famous star or musician? Sounds glamorous but these professions bring special problems. **Kally Forrest** spoke to president **Mabutho 'Kid' Sithole** and general secretary **Israel 'Oupa' Lebogo** from the new Creative Workers Union of South Africa (Cwusa) about conditions in the industry and what they aim to achieve.

Last year Pawe (Performing Arts Workers Equity) and Musa (Musicians Union of SA) merged to form Cwusa (Creative Workers Union of SA). It is a union that brings together a wide range of people in the entertainment industry such as performers, theatre and television practitioners, technicians, dancers, directors, choristers, models, front

of house staff, designers, presenters, make-up artists, voice-over, fine artists, photographers, script writers, musicians and 'roadies' who prepare the stage for performers.

When Pallo Jordan became Minister of Arts and Culture, Pawe and Musa engaged in talks with him on how to organise the creative arts industry. It was here that he expressed a wish to talk to an organised labour entity. Musa and Pawe were both affiliated to Cosatu and so Jordan's suggestion fitted comfortably with Cosatu's policy of one sector, one union. Union leadership realised that to become a voice in the entertainment industry they needed a larger membership.

After talking for some time the unions merged in 2006. Musa brought about 4 000 members to the merger and Pawe 2 500. Cwusa's membership was mainly black although previously the separate unions had white members who mostly left when they joined Cosatu in 1997. Comments actor and Cwusa president Kid Sithole, "It was easy for us to come together as we are like-minded and all have to deal with agents, contracts, intellectual property. There is lots of synergy."

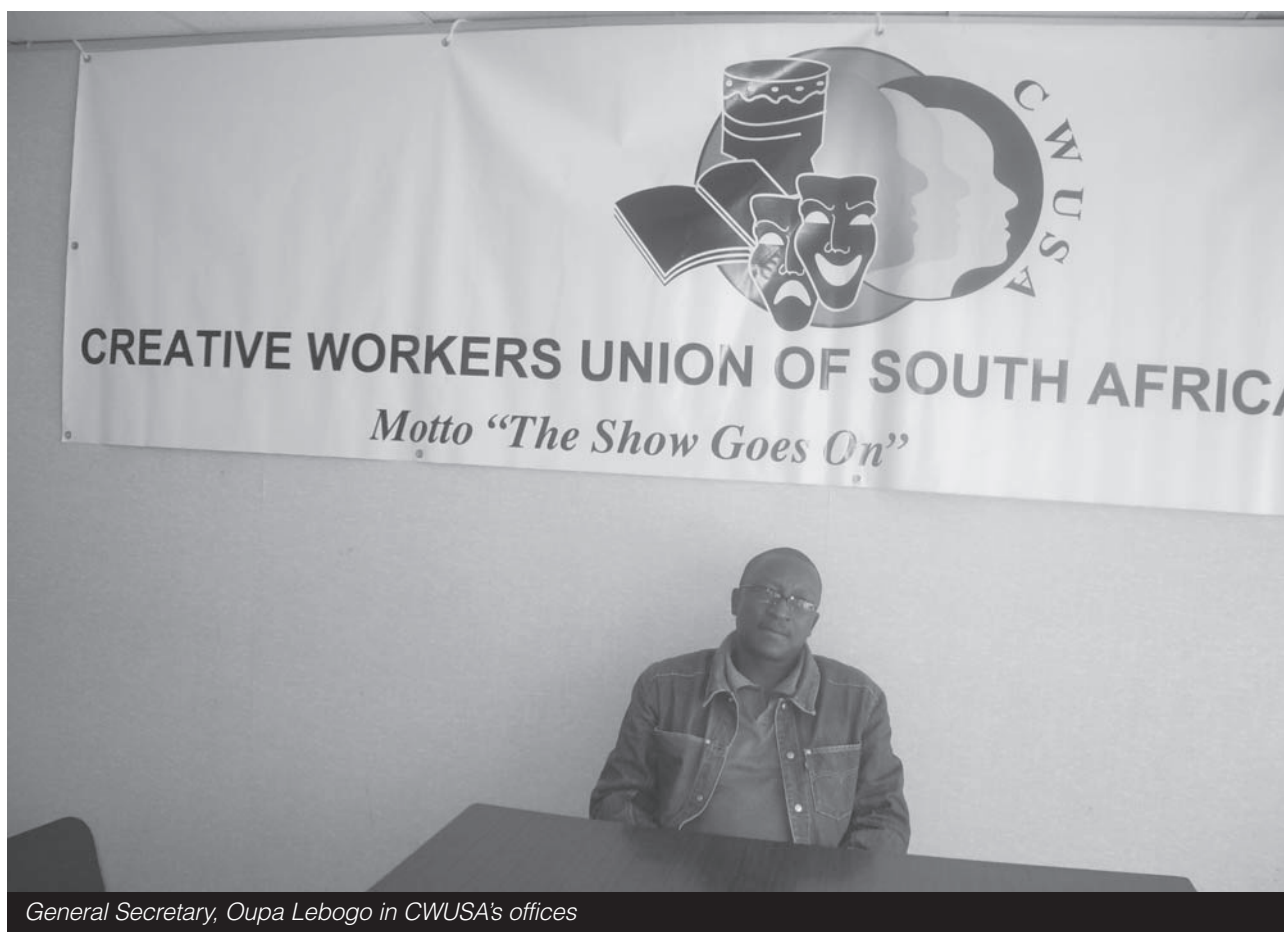
In June 2007 a merger congress will be held in Johannesburg where Cwusa will adopt a more representative constitution, which allows for other disciplines such as crafts and visual arts to be

brought in. Over the past few months Cwusa has run workshops in each province to make the union more representative and to put democratic structures into place.

A-TYPICAL WORKERS

Historically the arts and culture sector has been very neglected in terms of trade unionism. Pawe, for example, was only registered in September 2005. Sithole believes that creative arts people are not seen as workers. "We are seasonal. We are not defined as workers for purposes of the UIF (Unemployment Insurance Fund), medical aid, pension funds, access to the skills development fund. We work all over the place in a fragmented way so the Basic Conditions of Employment Act (BCOEA) does not apply."

The union has been engaging the Department of Labour on the question of atypical work. At the centre of discussions is the question of whether performers are contracted, casual or service workers. Says Cwusa's general secretary Oupa Lebogo, "If someone hires musicians to play at a wedding, are they employing them or are the musicians giving a service?" The union believes that they are employed and should be considered as workers who fall under the Labour Relations Act. "Those musicians are not self employed contractors like a plumber who is hired to come in



General Secretary, Oupa Lebogo in CWUSA's offices

and do a job. Musicians have to rehearse beforehand, unlike a plumber, and people who do 48 hours or more for one employer are considered to be workers in terms of the LRA. They should also be covered by the BCOEA.”

At present performers have no protection under the law. They have to defend themselves through contracts. Contracts are a problem for performers as the agent draws them up and performers have little to do with the process. “It’s about rights,” explains Lebogo, “Your wardrobe, lunch breaks, rehearsal time, sick pay – they should all be in your contract. Many artists would not know this. A rural artist definitely wouldn’t know that such rights should go into a contract so you need generic legislation to protect

them. Besides little control over contracts, creative workers have little direct access to information about their employment conditions. For example, the producer employs a performer to take a lead role in a production. The production house complains that it can’t afford the actor. It pleads poverty and comes to an agreement with the broadcaster on a lower rate for a different performer. “In the end,” commented Lebogo, “they employ a third grade performer and I have no access to their contract so I can’t challenge this.”

Performers have not social security. No UIF, no pension, no benefits. Only a few collection societies have established Benevolent Funds for funeral and sickness payouts. In response the

union is looking at the Swedish model for unemployment benefits. In this model musicians contribute to a Fund while they are working and when they are out of work between contracts they can claim unemployment benefits.

The seasonal nature of the work has also created problems for organising in the sector as members are in and out of work. This meant that historically Pawe and Musa have made piecemeal gains for workers mainly at an individual company level and not across the industry.

Pawe for example has gained recognition at the South African Broadcasting Corporation (SABC) where most of its members come from. It managed to negotiate sick leave and pay for members on individual short-term contracts

and was successful in a number of dismissal cases. Musa also negotiated a 7% increase on music royalties with the SA Music Rights Association. But they have not been able to significantly protect artists who are not employed by large companies or institutions.

Sithole believes that, "What Cwusa needs is an inter-ministerial approach. The Arts and Culture ministry must coordinate all relevant ministries especially the Department of Labour (DoL). We need a cluster approach."

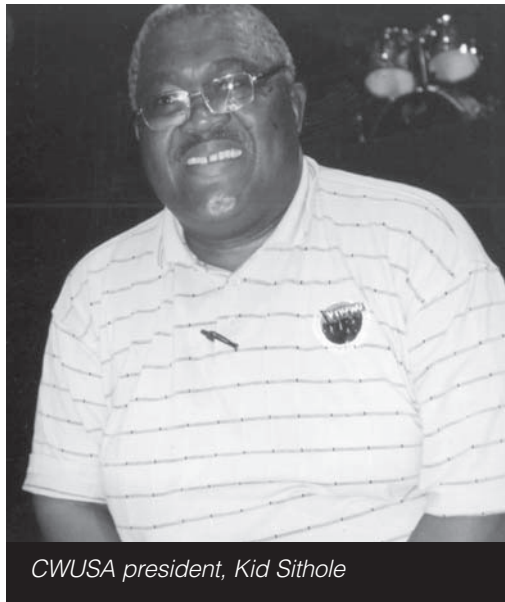
INTER-MINISTERIAL APPROACH

Currently no sectoral determination or centralised bargaining agreement cover the creative arts industries and as previously noted labour laws do not cover many of these workers because of the temporary nature of their contracts.

The union has approached the DoL to establish a national bargaining council to cover the entertainment industry. On this structure unions and relevant employer bodies such as the SABC, M-Net, video shop owners, eTV and industry production organisations could sit together to negotiate conditions across the industry. Comments Sithole, "A media, advertising, printing and packaging bargaining council exists but it does not properly cover the performing artists who are seen as 'by the way'. Nothing

covers us. People have no clue about our industry."

He believes the Department of Housing also needs to come to the party. Most of the union's members, even well-known stars, live in back yards partly because of low wages, but also because they are hamstrung by the nature of their profession. If they want to get housing loans they need a



CWUSA president, Kid Sithole

letter from the employer stating that they are in regular employment and that they can sustain the loan. Many members cannot produce such a guarantee as they have many different employers in one year. This applies equally to accessing RDP housing.

The union has written to the Minister of Housing to propose that an ID book should be sufficient to apply for housing and it has also called on the Banking Council to assist in resolving this problem.

The Minister of Finance also

needs to assist. The state provides little funding to the National Arts Council. Most of the time producers are forced to go to the private sector for funding. Notes Sithole, "This means that corporates dictate the kind of performances we see. They love pumping money into such productions as symphony orchestras and ballet, but disadvantaged communities are neglected. Often productions are pulled early because they cannot pay the crew any longer. In sport, such as rugby and football, corporates queue to fund functions especially as there are tax incentives attached to such funding. In like fashion the Minister of Finance should introduce tax incentives for the arts. In a memorandum of agreement with the Minister of Arts and Culture we need to add a clause to prevent such bias."

Further Sithole contends, the Ministry of Communication needs to play its part by enforcing local content. The Independent Communications Authority of SA (Icasa) needs to redefine what this means. "The SABC simply repeats local shows and then says they have met their local content quota. Artists need to participate in transparent commissioning procedures so we can give input on local content. It is in the interest of local producers to ensure this happens because they also want to get decent budgets." Such talks would also need to define equitable distribution of work as many black production companies have collapsed whilst experienced white companies get

Kally Forrest

the work. A BEE framework does not exist in the industry.

A role exists too for the Ministry of Home Affairs. When companies come in from outside South Africa to produce films negotiations should take place to ensure that local employment is created for photographers, actors, musicians and so on. Explains Sithole, "They need to be asked what are you leaving behind and what are you transferring to us? Skills can only add to our GDP."

In other countries such as Australia and New Zealand performers are protected by laws which address these issues. The union wants to push for a National Arts Indaba in order to draw up a National Arts Charter to itemise these aims.

KNOWING YOUR RIGHTS

One of Cwusa's big responsibilities will be to educate creative artists on their rights. Lebogo explains how important this is in the music industry.

Lebogo is the flute and alto sax player in an Afro-jazz group *Keitu*. From early in his music career he began to question bad conditions in the music industry. Like most music practitioners he did not understand the industry. "Most practitioners don't run efficiently. They believe music is a 'calling', a gift, that's what's upfront for them. Managing their talent in order to make a decent living is another issue. So my first exercise was to understand my rights and the laws that govern copyright."

Most musicians lose their copyright. "Take me," says Lebogo, "Three albums down the line I

have no copyright. We don't have money to manage the whole share process. Much of the earnings go into foreign owned companies like EMI, Universal, BMG and Sony. Only Gallo is local. Musicians need information and education on the industry. They need to know how to go about owning their own label."

Musicians are also not knowledgeable on the publishing side of things. They relinquish their ownership and publishing rights to the market who distribute their works without consultation with the author. "This needs to be reversed. South Africa is a signatory to the Rome Convention which upholds such rights, we just need to put it into practice," comments Lebogo.

In South Africa there are a number of collecting societies who gather royalties for composers. Sambro monitors and collects royalties from music aired by SABC; Sarral deals with the artists' rights where recording companies sell music to be adapted internationally; Rissa monitors videos and collects royalties on the artists' behalf; and Norm monitors composers' royalties. Explains Lebogo, "Composers need to know about these organisations and to ensure they become members in order to get paid royalties."

In general, however, composers are more protected than the musicians who play and perform their works. When the work is published the composer gets royalties but the drummer, for example, is only paid a fee for playing at a session. "Performers

also need to get royalties," insists Lebogo, "because they are the people who make a composer's work come to life and to succeed." For the last three years the union has been engaging government on the issue of protecting performers and on the necessity of putting legislation in place in line with the Berne Convention, which recognises performers' rights.

FINALE

In the meantime the union's chief task is to recruit, recruit, recruit. In the past Musa and Pawe have taken up cases for artists who were not union members, but Cwusa is now trying to ensure that artists join and pay regular subs and not only approach the union in times of crisis. As Sithole puts it, "We are trying to tell people to buy their umbrella early and not when the thunder is already rolling in the sky."

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Kid Sithole has been involved in all aspects of theatre as an actor, writer, producer and has worked with such greats as Gibson Kente. He is also a former Soweto ANC counsellor and participated in township peace structures in the early 1990s. He was Pawe president from 2001 to 2004 and became its general secretary in 2005. Oupa Lebogo is a flute and sax player in an afro-jazz band "Keitu" which has produced three albums. He was elected the general secretary of Musa in 2000. Sithole and Lebogo are now acting president and acting general secretary of Cwusa respectively.